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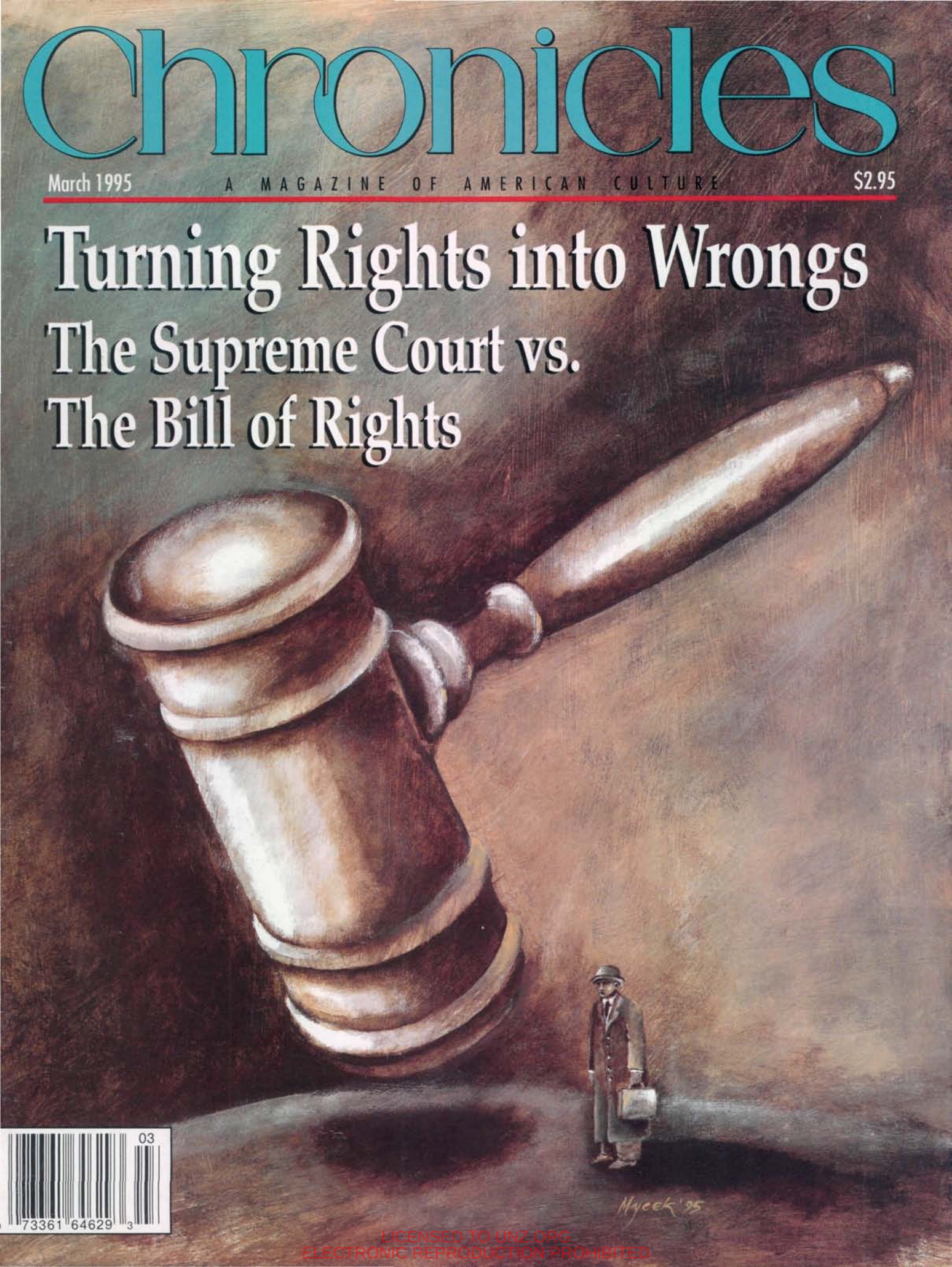
Turning Rights into Wrongs

The Supreme Court vs. The Bill of Rights



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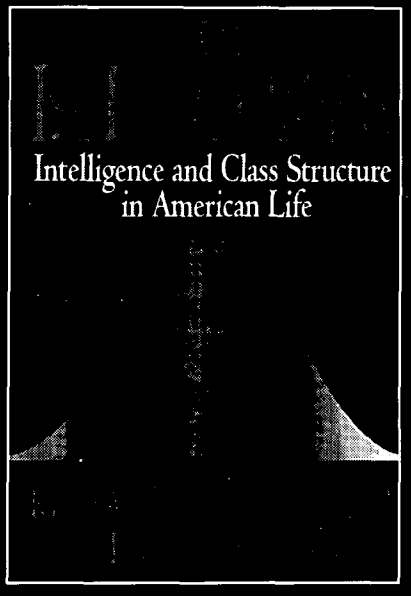

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A MAGAZINE OF AMERICAN CULTURE

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POLEMICS & EXCHANGES

On Russophilia

Professor Ewa Thompson's belief that unless the Russian Federation breaks up, it will remain a tyranny regardless of appearances ("Russophilia," October 1994) is absolutely correct. The West's cool response to this prospect is another example of our hypocrisy, as we profess to want freedom and self-determination for all people and yet hide our eyes from Russian atrocities, both past and present. For example, a recent article I read lamented the hard times that Russians are experiencing in the Baltics. The author never explained *why* these Russians are there in the first place. Nor was there any mention of the atrocities committed by the Russians against the Balts. It was easier for the author just to accuse the Balts of nasty nationalism.

In the few articles where Russian crimes are mentioned, they are categorized as "Soviet" crimes and then glossed over. Some ask, why stir all this up now? After all, "Uncle Joe" Stalin has been dead for many years, and it's all ancient history. But 1986 is not ancient history. In that year, some 4,000 Estonians, Lithuanians, and other captive peoples were taken to Chernobyl and forced at gunpoint to clean up the world's worst nuclear disaster without any protective clothing or gear. False radioactivity readings were given. Those who refused or rebelled were shot. The "survivors" ended up in hospitals in their native lands to die slow deaths. True to form, this crime was ignored by all but a handful of small publications in the West.

The children, grandchildren, and great-grandchildren of the Balts and other Eastern Europeans are long accustomed to this lack of integrity in the Western press. After all, the accounts of refugees, exiles, and dissidents were dismissed as exaggerated or false, even by those in high positions who knew the truth. "Live not by lies." Solzhenitsyn's dictum applies to the West as well as Russia.

—Eva M. O'Keefe
Grand Haven, MI

On Boycotting

May a new reader and (Genovese-minded) leftist be permitted to make two brief responses to Thomas Fleming's excellent article "The Lesson of the Roaring Parrot" (Perspective, December 1994)? First, it is intensely pleasurable to boycott Tom Hanks; it does not involve an act of will at all. It may be fine to boycott Kathy Mattea. But I just watched Merle Haggard inducted into the Country Music Hall of Fame, and guess what? He was wearing an AIDS ribbon the size of a small parrot (don't ask me why), but ain't no way I'm boycotting Merle Haggard. Your proposal needs some fine tuning.

Second point. Many years ago I made the distributist argument about greengrocers and butchers to a friend of mine. I was single at the time. My interlocutor was married and pointed out that for a woman with three or four children, the supermarket is a blessing. Having children of my own now, I can testify to his point. It is only yuppie scum in New York vainly trying to turn the east or west side of Manhattan into a disgustingly parodic vision of neighborhood who buy at small shops. Men who wear sansabelt trousers and women with baby formula stains on their dresses—people who live in real neighborhoods—shop at Star Market or the A&P.

—Robert Alpert
Watertown, MA

Dr. Fleming Replies:

Some readers may have taken me too literally. The point I was making is that money is the currency of power and that we should make some effort to spend our money as if we were voting. I suppose it is a corollary to Sartre's dictum that a man should live his life as if he expected everyone in the world to imitate him, which is an existentialist version of the Golden Rule.

As for Merle and the AIDS ribbon, lots of basically decent people get caught up in the fashions of their community or their profession, and it sometimes takes a heroic effort to stay free. Guys like Tom Hanks are a different story—they are active propagandists rather than passive accomplices. The same goes for

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Kathy Mattea.

The same sort of "fine tuning" is applicable to my observation on supermarkets, etc. Here in Rockford, there are several local supermarket chains, where we do shop, as well as smaller groceries, wine merchants, greengrocers, etc. But I have tried to persuade my wife not to go to a certain Chicago chain with a history of underpricing to eliminate competition. My real point is to tell people to shop not according to *my* opinions but *theirs*.

CULTURAL REVOLUTIONS

CHRISTMAS is the time when the bureaucrats and judges who rule the United States launch their perennial war on Christianity. A recent skirmish in Boulder, Colorado, may give a hint of future directions the war may take. Boulder is a secular university town with several government agencies and "non-polluting" computer industries, run politically by a "liberal" machine. Its public schools are good in science and extracurricular activities, but mediocre to unspeakable in many academic areas. Its second high school, Fairview (named for the view of the Rocky Mountains from the school, not for its hideous "modern" architecture), has had an annual Christmas show for over two decades, organized by choir director Ron Revier, a talented musician and conventional secularist. For 20 years or so the musical program, a hodgepodge of seasonal music, has ended with the student choir marching through the auditorium humming "Silent Night." For the choir director, it was "a simple, magical moment of bonding."

The bureaucrats who run the public schools thought otherwise. In 1992, district administrator Lydia Swice declared that humming "Silent Night" created "a religious service atmosphere" and could no longer be permitted. (*Note bene, lector*. There was no religious service. The people who run our country are intent on eliminating even the "atmosphere" of a religious service.) Last year Revier tried to salvage his finale by getting his hands on some repulsive New Age lyrics intended to be sung to the music of "Silent Night" while desecrating all that inspired that music. The bureaucrats brooded. Obviously, the desecration of a Christian tradition is to be encouraged. There was, however, another consideration. While the 300 students from six choirs marched out, singing this tripe, would the audience be rerunning in their minds and hearts the words a simple choirmaster wrote out of his Christian faith? The risk was too great. On the day before the musical program in 1994, Queen Herod sent down her edict. No singing. No humming. Our rulers' war against the Christian tradition is total war. Better silence than "Silent Night."

The night of the program the auditorium was full, as it is each year. Revier's talented and committed students again put on an excellent program for their parents and the Boulder community. When it was over, the students started to file out in humiliating silence, a silence mandated by those who run our country. No one knows who started it. As the students filled the aisles of the auditorium, the entire audience rose to its feet, singing. Singing the words of "Silent Night." The students joined in. The auditorium of Boulder's Fairview High was filled with words and music proclaiming the peace and love sent into this world by the only true God, the Father of our Lord, Jesus Christ. Glories rained from heaven above. Heavenly hosts sang, "Hallelujah." As a contemporary educator might put it, "it was a magical moment of bonding."

The traditions of what Bronson Alcott called "civil disobedience" began in religious obedience. Socrates in his *Defence Speech* uses almost the same words as Saint Peter before the Sanhedrin in Acts: "We must obey God rather than men." Socrates did not believe, any more than followers of Jesus do, that we ought to avenge personal insults and injuries. The proclamation of God's word is something else again. Christians have a moral and religious duty to disobey, to defy, a government intent on suppressing Christianity. Even secularists who want to continue to enjoy the blessings of civil government and scientific and artistic creativity, even of simple law and order, may want to ponder what George Washington warned in his "Farewell Address." Whatever benefits education may bring to a certain type of mind, religion has been and must be the foundation of meaningful existence for most people and every society. Christianity pervades every aspect of American society, even of traditions that predate Christianity, such as science and self-government. Its disappearance will bring, is already bringing, chaos and tyranny. The regime that rules the United States must go, and each American must do his part, even if at first that part consists only in raising a joyful noise unto the Lord.

—E. Christian Kopff

PROPOSITION 187, California's famous (or infamous) proposition to deny public services to illegal immigrants and their offspring, encouraged at least one member of Virginia's General Assembly to propose similar legislation in this year's session. The stout-hearted fellow's name is Warren E. Barry, and he represents Fairfax County in Virginia's Senate. For some time now, the rising number of illegal aliens in Virginia and the cost of educating immigrants in Fairfax County have ruffled the senator's feathers. Last year, he introduced a measure in the assembly that would have required the Commonwealth to calculate the cost of providing public services to illegal aliens and to establish procedures to report them to the Immigration and Naturalization Service. That bill passed the Senate but stalled in the House, which established a commission to study the issue.

Though Barry couldn't get statistics on Virginia, facts and figures on seven other states are available from the Urban Institute, which published a report on the subject in September. California, New York, Texas, Florida, Illinois, New Jersey, and Arizona spent $3.1 billion educating 641,000 illegals. Those states also report spending $445 million on Medicaid for illegals. Local municipalities and counties such as Washington, D.C., and Arlington County probably spend about the same amount of money

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in proportion to their size and the number of illegals.

But what few critics of illegal or legal immigration ever mention is how immigrants affect the country culturally. The Urban Institute again cast some light on the subject, in a study released in May: "The number of people who speak a language other than English at home grew by 37 percent—from 23.2 million to 31.8 million—between 1980 and 1990. . . . Between 1986 and 1991 the number of students counted who did not speak English very well grew by over 50 percent." Half the population of Los Angeles speaks a language other than English at home, the report says, and 50 percent of recent immigrants report speaking English "very well" or "well," which means 50 percent of immigrants *can't* speak English very well. Whether an immigrant should be the judge of whether he speaks proper English is open to question, but in any event the report's final statistics are the most alarming. About 20 percent of all immigrants speak a language other than English at home, and "only" 25 percent of immigrants say they speak English "not well" or "not at all."

These statistics are significant, particularly given that nearly 20 million people in the United States (as of 1990) were foreign-born. Take the example of the industrious Chinese family in Silver Spring, Maryland, that the *Washington Post* recently profiled. Two Americanized daughters, both successful professionals, serve as the link between their parents and the rest of society. Otherwise, in the parents' insular world, only Chinese is spoken. It used to be that television provided one avenue for immigrants to learn English, but not anymore. These two folks watch only Chinese-language programs on cable TV. They patronize only Chinese-owned stores.

If it's true that the proof is in the pudding, look at Arlington County, where the banks profess they *habla Español*, nearly every taxicab driver is foreign-born, and the transit buses not only boast signs in Pancho Villa's native tongue but also remind one of a bus in Somalia or New Delhi. About 21 percent of Arlington's population of 180,000 comes from another land, mostly Third World countries, and the principal economic enterprises in which they seem to be engaged are hacking and restaurants. And like Silver Spring's cable company, Cable TV Arlington provides plenty of Asian- and Spanish-language programming, the latter for the county's burgeoning population of Hispanics.

This population has given voice to a vocal "Latino" lobby, which in turn is flexing its political muscle. It went bonkers over Senator Barry's proposal. "People are looking for scapegoats," whined Samuel McTyre, head of the United Latin American Citizens League. "There is populist anger and immigrants are the target," sobbed Angela Kelley of the National Immigration Forum. So intense is the fear of Senator Barry's proposal that a group known as the Council for Latino Agencies, based in Washington, D.C., is coordinating the formation of a special coalition to fight it. You'd think the INS, which is headquartered in Arlington, was preparing for a sweep through the county's low-income housing projects similar to Janet Reno's sweep through Waco.

What neither Senator Barry nor the proponents of Prop. 187 realize, however, is where the real fight over immigration lies, although the wetbacks-are-good crowd seems to have figured it out. The Latino lobby is worried about all immigrants, legal or not, because it fears the so-called slippery slope. If Americans take a stand on illegal immigrants, the next target might be the legal variety. Exactly.

Culture, as Francis Fukuyama argued in the Manhattan Institute's *Strangers at Our Gate: Immigration in the 1990's*, is the real issue: "The deeper more important issue behind immigration is culture. It's certainly more important than economics. If you were to decide, for example, that immigration is somehow crucial to the vitality of American culture, then you would probably accept a small negative economic impact. Conversely, if you believe that immigrants threaten American culture, you would have to prove a fairly high level of economic benefit to make immigration worthwhile."

This is exactly the problem the Urban Institute's figures highlight. Forget how much illegal aliens cost. How will legal immigrants who refuse to learn English affect our culture? And what does their ability to get by without speaking English say about our own sense of identity, national character, and nationhood?

Immigrants are a menace to American culture no matter how they affect the economy, and Senator Barry, for all his sincerity, must recognize them for the problem they are. As long as he and his supporters fix on economic and other utilitarian arguments to generate fear of foreigners, they will lose their fight against those like Bill Bennett and Jack Kemp, who can muster statistics to "prove" that immigrants help the economy. What the Bennetts and Kemps cannot show is that immigrants strengthen a society in which they refuse to assimilate.

Given the climate here in Virginia, some form of Senator Barry's legislation is likely to pass the General Assembly. If the Bennetts and Kemps manage to defeat it, perhaps they need the slap in the face Americanos get when they drop by the bank or take a ride on the bus in Arlington, Virginia.

—*R. Cort Kirkwood*

AN ELECTION footnote. Ron and Nancy Reagan must have thought long and hard before campaigning against Oliver North. After all, the 11th commandment, "never criticize a fellow Republican," may be the only one this show-biz duo hasn't broken. But campaign they did, Ron by calling North a liar in the primary and Nancy by repeating the charge in the last weeks of the race. What followed in each instance—derisive laughter from North's supporters—confirmed what many had already suspected: Ron and Nancy are irrelevant. Nancy, after all, was last heard of running the White House via a San Francisco astrologer and having intimate lunches with Frank Sinatra when Ron was out of town. As for Ron, this is the man who captivated conservatives for two decades before his presidency. He was the living embodiment of everything they hoped to achieve. Now he's a vague memory from a bygone era.

Every so often, some conservative magazine or newspaper tries to revive the zombie of Reaganism. The *Wall Street Journal*, for example, republished the text of Ron's speech for Barry Goldwater in 1964. "This is the issue of our time," he said, "whether we believe in our capacity for self-government or whether we abandon the American Revolution and confess that a little intellectual elite" should run our lives. Ron was right, but the effect of publishing this speech was to underscore the fantastic waste of time and energy of the Reagan years: two consecutive terms, and not a single promise kept. Instead we got a tripled deficit, a doubled budget, six tax increases, expanded federal police power, two new government agencies, and American

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troops running all over the world. Nor was this the fault of Ron's advisors (Reagan *was* Reagan) or of Democrats in Congress (who consistently *cut* White House spending requests). As governor of California, he was a big taxer and a big spender too. It was Ron's leviathan that gave birth to Proposition 13, as Phil Crane pointed out when he opposed Reagan in the 1980 primaries.

The hard right always saw Reagan as a neoconservative, that is, a liberal posing as a conservative. They said he was owned, lock, stock, and barrel by Hollywood leftists; he was the beloved president of a commie union; and his hero was the dictator FDR. Reagan did nothing as President to disprove this analysis.

There's a larger lesson, however. We have long since passed the time when new D.C.-implemented policies could save us. As Reagan said in 1964, we don't need a distant elite running our lives. And we don't need a distant elite running our revolution. Everywhere, the people are rising up, in blissful ignorance of Ron and Nancy, although their release of Reagan's Alzheimer's diagnosis just before the election did, as intended, boost their charges against North among mainstream Republicans. But whatever the merits or demerits of Oliver North, the people who backed him have a revolutionary agenda that goes far beyond a senate race. It is that agenda that will determine the future of the right.

—Llewellyn H. Rockwell, Jr.

R.I.P. ERWIN KNOLL. I first met Erwin Knoll in a Turkish restaurant in Madison, Wisconsin, where he had been editing the *Progressive* since 1979. One of Erwin's younger colleagues asked me several times in the course of lunch what could possibly interest a right-winger in such a magazine. As leftist as the *Nation* in many respects, the *Progressive* nonetheless was the last vestige of Midwestern populist-progressivism that stood up both to American imperialism and corporate plutocracy. And it was this strain of American revolt that interested me. Knoll, for his part, wanted to hear about Russell Kirk, whom John Judis had assured him was something more than the run-of-the-mill lackeys of the regime who call themselves conservative.

In this and subsequent meetings, Knoll was affable, courteous, and fair-minded. When we debated on Milt Rosenberg's radio show in Chicago or when Erwin interviewed me for his own program in Madison, he was able to maintain his own position without attacking the character of his antagonist. Indeed, it was hard to think of him as an antagonist at all, only a genial uncle who had been unable to detach himself from a leftism that was increasingly incapable of resisting the power of the regime.

Knoll and the *Progressive* became famous, or rather infamous, for their militant advocacy of the rights of a free press. When they published H-bomb plans that were in the public record—in order to reveal the danger of both nuclear weapons and slipshod security—he was denounced by right-thinking conservatives as a traitor, and when he published advertisements for Feminists for Life and the American Tobacco Institute, he was denounced as a turncoat to his principles. He smiled his way through all these episodes, briskly swatting specious arguments like so many flies—I think of Sydney Greenstreet in *Casablanca*.

Erwin Knoll showed what he was made of during the Gulf War, when most of the leftists who had protested the Vietnam War jumped at the chance to show themselves as safely hawkish as the editors of the *New Republic*. I was asked at the time, by a network television news producer, if I could name an effective antiwar spokesman, and my first suggestion was Knoll. "That's funny," said the producer, "he told me to call you for advice." One of the few consolations of that dreadful conflict was the opportunity it gave the American people to see a principled journalist slipping his truths in between the lies.

A number of our subscribers were puzzled by Erwin Knoll's appearance in our October 1994 issue on journalism. Ironically, I had asked several conservative journalists to contribute to the issue. Some refused; some promised and did not deliver; others did not answer my letter. Erwin Knoll was a professional journalist to the last, and although we had a temporary misunderstanding over the deadline, he came through in the end, as he always did.

—Thomas Fleming

UNIVERSAL SUFFRAGE has long been the left-wing ideal, because of its egalitarian symbolism and redistributionist result. Those "nonpartisan" groups bugging people to "vote for the candidate of your choice" aren't doing liberty and property any favors. The wider the franchise in a collapsing social order, the more property is up for grabs.

Thus an ominous sidelight to the 1996 election: the left is pushing for mandated time off to vote. For fundraising purposes, the Center for Democratic Renewal in Atlanta, Georgia, is "investigating" whether employers in Wedowee, Alabama, are overworking blacks to keep them from voting for black school board candidates. (Isn't it enough that egalitarian agitators egged on vandals to burn down Wedowee's high school? Now are they going to take over its private sector?) And the Committee for the Study of the American Electorate complains that jobs are keeping people all over the country from voting.

But if someone doesn't have the internal drive to get to the polls before or after work, during lunch or coffee break, he probably shouldn't be voting—admittedly a heretical thought in a mass democracy. The truth remains: it was a terrible mistake to institute the direct election of senators, to lower the voting age, and to forbid filtering devices like property qualifications and literacy tests. The voter has been systematically devalued for more than a century. The next logical stop is to mandate voting on a national holiday, the Devil's version of the Holy Day of Obligation.

—Jeffrey Tucker

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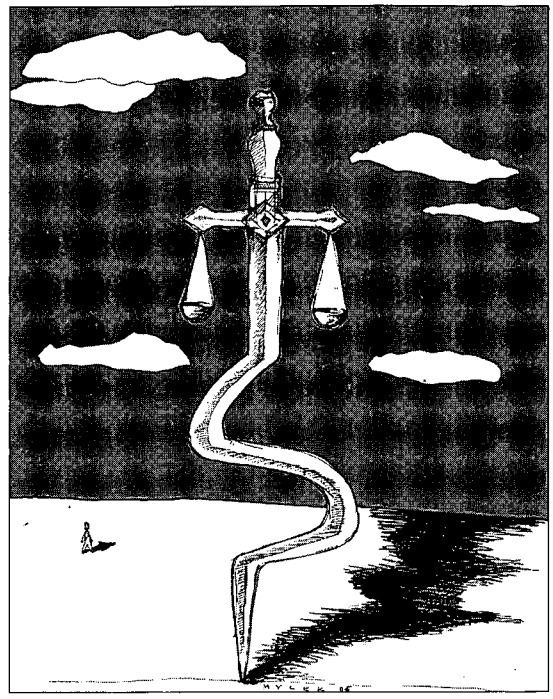

Anna Mycek-Wodecki

Turning Rights into Wrongs

by Thomas Fleming

How Democracies Perish was the subject, as well as the title, of an important book by Jean-Francois Revel. M. Revel is a hardheaded journalist who takes little interest in political theory, but he is a keen observer of the corruption into which the states of the West have fallen.

When I had drinks with him a few years ago, much of the talk was about the corruption of the Mitterrand regime. Ruling classes almost always turn out to be venal and corrupt, and I regret not asking him to delineate the common characteristics that stamp Mitterrand's socialists, as well as Democrats and Republicans in the United States, with the same mark of the beast that was so visible on the foreheads of the Soviet *nomenclatura*. Ossified in their mediocrity, stupid in the conviction of their God-given right to rule, for sale, like the friends of Henry Kissinger, not to the highest bidder, for that would take intelligence, but to any bidder, the latter-day Communists of the East and the Social Democrats of the West understood each other all too well. No wonder George Bush protested, when conservatives were wary of a Soviet leader who had formerly headed the KGB. At the time, we thought Mr. Bush was simply being obtuse, when he compared his own position, as former CIA director, with that of Mr. Andropov. It took someone as paranoid as Andrei Navrozov to realize the truth. The principal difference between their side and ours is that while Mr. Bush is a Yale man, Mr. Gorbachev has gone to Harvard.

If the Soviet Empire rested on force—the army, the KGB—here in America, the regime has only occasionally based its power on the army, and since that one episode in military rule, the ruling class has preferred to use the federal courts to thwart reform and suppress the state and local jurisdictions that stood in the way of establishing a power monopoly in Washington. One hundred years ago it was the federal courts that prevented the states from cleaning up the corruption caused by the railroad monopolies that owned state legislatures outright. It is all too easy to deprecate the progressives and populists who wanted state ownership of railroads and utilities, until one actually studies the machine that Bob LaFollette was up against in Wisconsin, a machine kept in place by the federal courts. Closer to our own time, the federal courts have seized control of our school systems, gerrymandered the election process, and, slowly but surely, worked to establish a national religion, supported by compulsory tithes and preaching doctrines that would have embarrassed any honest atheist of a hundred years ago.

I occasionally meet people, even educated people, who pretend to believe that something called the Constitution has prevented the establishment of a national church. After all, the First Amendment states clearly that "Congress shall make no law respecting the establishment of religion nor prohibiting the exercise thereof." What the Framers of that amendment were trying to prevent was a system like the Church of England, which collected taxes to support the church, imposed religious tests upon office-holders, and even had its doctrines promulgated in state-supported universities and schools.

Obviously there were differences between the state churches of France, England, and Massachusetts, but the main points are compulsory tithing, in one form or another, and the promulgation of official doctrine through schools and other media of information and indoctrination. How are things different in the

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United States, where taxes are collected at the local, state, and national level, to support government schools where the religious and ethical views of most citizens cannot be taught and where the "philosophy" of the ruling class is spooned out as truth, science, and the American way? For want of a better name, this religion can be called Liberalism, a Protean creed that used to emphasize individualism and the glories of New England and now prefers to speak of group oppression and cultural diversity. Some of the differences may be more apparent than real. Emerson and his sycophants used to insist upon American culture as something distinct from Europe while at the same time drooling after Oriental cultures they knew mostly from their imperfect readings of German translation. In America, if you scratch any cultural blister, the pus will turn out to be Unitarian.

The details of the national creed are unimportant; any schoolboy of the 18th century would be able to refute them. What is important is the fact that we are saddled with a vast and expensive church establishment that gives no instruction to the young, no relief to the sick, no comfort to the distressed.

How we got to this point would make an interesting story in two chapters. Chapter one would tell the tale of the New England Unitarians who used the public schools to establish their own anti-Christian doctrines, arguing (as Horace Mann did) that everyone believed in one God, but not everyone believed in the Trinity. Later on, a similar ploy was used against the Catholic minority, whose theology had a great deal more in common with the American majority of Anglicans, Lutherans, Methodists, and Presbyterians, than any of the Protestants had with the Unitarians.

This lowest common denominator game is still being played. Since not everyone in a school or district is a Christian, it is wrong to set up a creche or sing "Good Christian men, rejoice." On the other hand, it is not wrong to teach moral, political, and religious views that positively offend the 95 percent of the families that are Christian.

By the 1940's, when I was born, the public schools of the United States might be described in military language as "General Protestant." In most of the Midwest this meant that carol-singing, manger scenes, and Christmas pageants were part of the "holiday season" (the government holiday that has supplanted Christmas). In general, though, I do not think that school days began with either prayer or Scripture readings in most Midwestern schools, although I do remember my first grade teacher asking us, one Monday, where we had gone to church.

In the more Christian South, there was never any doubt where one stood. Every day began with the Lord's Prayer and a Bible reading. The duties were allotted to the students in alphabetical order, which meant that roughly once a month I had to ask my Christian friends to help me find an appropriate passage. I was a little embarrassed, of course, but since my family made no secret of its indifference to religion—our holiday appearances at the Episcopal Church hardly constituted a religious practice—it would have been rank hypocrisy to complain.

The gradual elimination of religious symbols and songs, prayers and ceremonies, from schools and public places was accomplished in less than 50 years by the Supreme Court. The course of this judicial oil spill has been made very easy to trace by Terry Eastland in his recent book, *Religious Liberty in the Supreme Court*. Anyone with the slightest interest in constitutional issues—anyone, in other words, who is a citizen—should spend a few hours with this book, reading decision after Supreme Court decision whittling away the religious liberties of American citizens and the rights of their once sovereign states. From *Cantwell* v. *Connecticut* (1940), in which the Court upheld the rights of Jehovah's Witnesses (a non-Christian cult) to violate the laws of Connecticut by disturbing the peace with their anti-Catholic diatribes, to *Lee* v. *Weisman* (1992), in which a five to four majority ruled against a school in Rhode Island that had invited a Rabbi to say a nondenominational prayer at a graduation ceremony, the Court has inexorably worked to establish its own prejudices as the law and religion of the United States.

Federalism requires the bricks and mortar of constitutional prohibitions against *most* of what the national government is doing, and that will mean either the repeal or the curtailment of the 14th Amendment.

Even in 1940, the mechanism was the 14th Amendment. In *Cantwell*, Justice Owen J. Roberts declared: "The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment. . . . The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws." Now, Raoul Berger has shown that the Framers of that amendment had no such intention. Their only goal was to make sure that former slaves, as such, were not formally deprived of very basic citizenship rights. In the congressional debate over the amendment, the question of a broader construction was raised and explicitly rejected. Perhaps even more to the point, Forrest McDonald has demonstrated convincingly that there are several grounds on which the passage of the 14th Amendment must be regarded as unconstitutional.

So, on the basis of an unconstitutional amendment construed against the expressed intent of its Framers, the Supreme Court has made itself supreme arbiter in all matters of religion. There have been dissenters, of course. In *McCollum* v. *Board of Education* (1948), Hugo Black, writing for the majority, declared against release-time for religion classes. Justice Stanley Reed, injecting a little reality into the case, pointed out that those who cite Mr. Jefferson's "wall of separation" failed to note that Jefferson had not kept religion out of the state university he established and that American military academies had chaplains, just like the Congress of the United States.

The use of history to refute ideology is a characteristic of the dissenters, and, after plowing through the lies and ignorance of Justices Black, Douglas, and Brennan, the learned and forceful dissents of then Justice Rehnquist in *Wallace* v. *Jaffree* and Justice Scalia in *Lee* v. *Weisman* come like a cleansing thunderstorm on a muggy August afternoon. If a reasonable man

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had any doubts about the constitutionality of school prayer and related matters, he only has to read Mr. Rehnquist's dissent, which establishes the true intent of the religion clause and the indifference of the Framers both to religious establishments in the states and to Christian prayers and practices within the federal government. He concluded on a somber note:

> If a constitutional theory has no basis in the history of the amendment it seeks to interpret, is difficult to apply and yields unprincipled results, I see little use in it. . . . The true meaning of the Establishment Clause can only be seen in its history. . . . It would come as much of a shock to those who drafted the Bill of Rights as it will to a large number of thoughtful Americans today to learn that the Constitution, as construed by the majority, prohibits the Alabama legislature from "endorsing" prayer. George Washington himself, at the request of the very Congress which passed the Bill of Rights, proclaimed a day of public thanksgiving and prayer, to be observed in "acknowledging with grateful hearts the many and signal favors of Almighty God." History must judge whether it was the Father of his Country in 1789, or a majority of the Court today, which has strayed from the meaning of the Establishment Clause.

A prudent Justice would ignore Rehnquist's challenge and continue to make up the law as he went along. Airy platitudes were good enough for the likes of Walter—er, William—Brennan, and that ought to suffice for the current court. Alas, David Souter—or his law clerks—is not bright enough to know his limitations, and in a concurring opinion in *Lee* v. *Weisman*, Souter attempts to refute Rehnquist's historical analysis. Using the language of deconstructionism, Souter argues for the distinction between preferential and nonpreferential establishments, and goes on—it would be hilarious, if Souter were not one of the Nine Archons—to complain that the Rabbi's prayer used the language of the King James Bible, a "theistic" document, explaining that, "Many Americans who consider themselves religious are not Theistic," and citing as examples the deists among the framers.

There are, of course, differences between theism and deism, even though both might be rendered "godism," but who is so foolish as to think that 18th-century deists did not believe in God? Jefferson was a religious skeptic, it is true, but he had a high regard for the nonmiraculous parts of the Bible and believed in the deists' benevolent and noninterventive creator.

Why go on? President Reagan had previously vetted this "village Hampden" for a future Court appointment, and President Bush approved him. Mr. Souter's only qualification was that he had never done anything remarkable. Those who insist on voting Republican because it will give "us" the power to appoint new Justices ought to reflect on the fruits of 12 years of Reagan-Bush: Sandra Day O'Connor, Anthony Kennedy, Clarence Thomas, and Antonin Scalia. Of these, only Scalia is not an embarrassment.

Ultimately, Justice Rehnquist's historical discourse is less to the point than Justice Scalia's barely controlled outrage in *Lee* v. *Weisman*. After surveying some of the historical ground and describing the Court's approach as "incoherent," Mr. Scalia went on to explain what a church establishment really is, observing that "The Establishment Clause was adopted to prohibit such an establishment of religion at the federal level (and to protect state establishments of religion from federal interference)." It is in the parenthesis that Mr. Scalia discloses the truth, that the federal courts now routinely construe the Constitution to mean exactly the opposite of what it says.

If the Court is going to continue to regard the 14th Amendment as valid and will continue to apply it to the states, no amount of learning or logic will avail. The conservatives' answer, a constitutional amendment, is as wicked as it is vain. It is vain because it will be a generic prayer amendment for a generic religion that no one professes. Indeed, many of the worst court decisions have been in response to the foolish efforts of states to impose such nondenominational prayers. We have already seen what Supreme Court Justices can do with the Bill of Rights—making the amendments mean the opposite of what they say—what hope can we have that they could do any less with a School Prayer Amendment or a Life Amendment?

But such amendments are worse than a waste of time; they would be positively harmful. In the first place, a School Prayer Amendment would unquestionably violate the First Amendment's Establishment Clause. What else would such an amendment be but a law, made by Congress, establishing a national prayer, which, presumably, no state could deny? It would not be a Christian prayer or even a general Judeo-Christian invocation like the Lord's Prayer. It would be a prayer that any "theist" including Taoists, devil-worshipers, and Santerians could use. It would be, in a word, Horace Mann's dream come true: Unitarianism as a national religion. Perhaps the "Rev." Moon would consent to preside, if he were not too busy keeping the stars in their courses.

Finally, such an amendment would be wicked, because it would distract us from the only political agenda worth our effort: a campaign to put these judicial devils back into the constitutional box that was opened by the 14th Amendment. As several leaders of the religious right have acknowledged, school prayer is a minor problem compared with other issues in which the federal courts have usurped authority: abortion, censorship, legislative apportionment, and school equity issues, including racial integration, forced busing, and the redistribution of wealth from "rich" to "poor" districts. If separate remedies have to be sought either in congressional legislation or constitutional amendments, then the struggle will be unending and even success would mean nothing better than a Constitution clogged with trivial amendments, each of which could serve as the pretext for another round of usurpations.

Many of our political problems have one neck: the power of the Court to make law through its broad construction of the 14th Amendment. The solution must be aimed directly at that power, either by declaring the amendment null and void or by a new amendment restricting the federal judiciary to its original functions. The time is right for such a campaign. The Republicans have been speaking very sensibly about restoring power and authority to the states. If this new federalism is to be more than rhetoric, more than a temporary concession of a few rights that have become inconvenient to Washington, it will have to be made of something better than the straw of campaign promises or the sticks of congressional bills. Federalism requires the bricks and mortar of constitutional prohibitions against *most* of what the national government is doing, and that will mean either the repeal or the curtailment of the 14th Amendment. Nothing less is worth the bribes and blackmail that must accompany any reform measure presented to any Congress.

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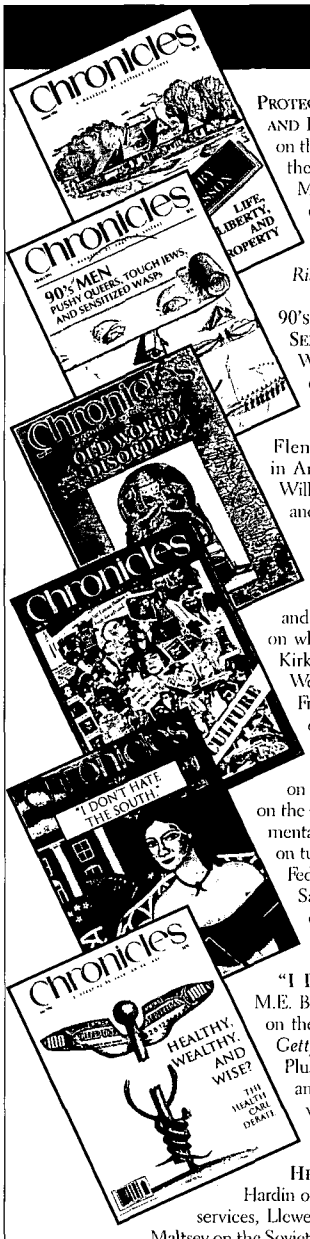

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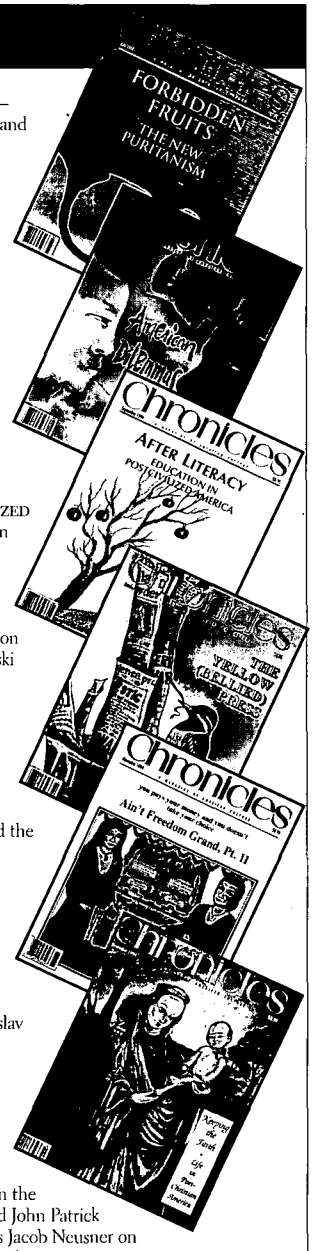

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Angels to Govern Us

by William J. Quirk and R. Randall Bridwell

Anna Mycek-Wodecki

"If men were angels," James Madison wrote, "no government would be necessary." Or, "if angels were to govern men, no controls on government would be necessary." Madison believed that men are about as good as they can ever be, and since no angels are available to rule, we need checks and balances.

Thomas Jefferson added the idea that "man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him?" The Supreme Court claims the ultimate say in the American legal system through the doctrine of judicial review, which allows the Court to nullify any state or federal law it considers inconsistent with the Constitution. Jefferson believed judicial review to be a dangerous assumption of power by the Court that "would place us under the despotism of an oligarchy." To Jefferson, rule by a Supreme Court is no better than rule by an English King. Maybe worse, since nobody even suggests that the Court rules by divine guidance.

For this reason and others, Jefferson and the Founders insisted on a written constitution. They believed this was the only safe way to institutionalize majority rule and to protect the people's liberties. The English constitution was unwritten, and Americans thought they suffered greatly under it. Their overriding fear was of a despotic central government—like the Crown and the Crown's judges. They thought the written constitution, by clearly allocating power and rights, would prevent that.

But a written constitution works the way the Founders wanted only if there is no judicial review. If there is judicial review the situation reverses and the people are worse off than they would be without a constitution. Supreme Court Justices, who obey no charter, have to justify their actions to a higher authority. If their government is a democracy—like modern-day England—they must base each ruling on the statutes of Parliament. If the nation is not a democracy—like feudal England—the judge still must act on behalf of ruling authority—the reigning king or queen. In either case, the judge's power could be corrected or reversed. Of course, it is possible to have a constitution where the judges themselves rule without being subject to any higher authority. This would be a form of absolutism, like an absolute monarchy with more than one ruler, or like the ancient Judges of Israel. In America, under judicial review, the Supreme Court contends that the country's founding document authorizes it to be the final interpreter of the meaning of that document. The Court says it is acting on behalf of a higher authority, the Constitution, but as a practical matter it is not subject to correction or reversal.

When judges assume a role as the final interpreters of the

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Constitution, they inextricably intertwine themselves with the document they interpret. The Court's opinions routinely employ the fiction that, when the Justices speak, it is really the Constitution speaking through them. The practical result is that when challenging the Court, one appears to challenge the fundamental document itself. The natural reluctance to challenge the Constitution discourages a political response to the Court's rulings; these rulings are then enforced, whether persuasive or not.

Judicial review presents a critical "Who is to decide?" issue. The Constitution itself does not say who is to interpret it. It creates three separate and equal branches. It does *not* authorize one branch to bind the other two by its construction. John Marshall thought the Founders had intended to give the Supreme Court the power to interpret the Constitution for the other branches but had inadvertently failed to write it in. Jefferson thought the Constitution's silence on this issue was exactly what was intended—that each branch was to have equal and unlimited authority to interpret the Constitution for its own purposes without one branch setting over the other two.

As a lawyer, Jefferson understood that the power to construe or interpret a document is the critical power. The Constitution "is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please." Its words will mean whatever the interpreter wants them to mean. The Constitution, if the Court has the ultimate say, is a Judicial Constitution. As Jefferson warned in a letter to Wilson Cary Nicholas on September 7, 1803: "Our peculiar security is in possession of a written Constitution. Let us not make it a blank paper by construction."

He amplified these views in a letter to Judge John Tyler in 1810. The law in the hands of John Marshall "is nothing more than an ambiguous text, to be explained by his sophistry into any meaning which may subserve his personal malice." Judicial review, he argues, allowed for a Supreme Court "which from the citadel of the law can turn its guns on those they were meant to defend." The Justices, by 1810, had "erected themselves into a political body with the assumed functions of correcting what they deem the errors of the nation."

Judicial review is incompatible with what we know the Founders did intend—federalism, majority rule, the sovereignty of the individual, the separation of powers, and checks and balances. They *did* intend that each branch would check the other—that each would have an independent power to determine the meaning of the Constitution. In other words, Jefferson believed the Constitution intended *concurrent review* by each branch rather than judicial review; as he wrote in his First Annual Message to Congress, December 1801, "Our country has thought proper to distribute the power of government among three equal and independent authorities constituting each a check upon one or both of the others in all attempts to impair its constitution." To "make each an effectual check it must have a right in cases which arise within the line of its proper function where equally with the others it acts in the last resort and without appeal, to decide on the validity of an act according to its own judgment and uncontrolled by the opinions of any other departments." Jefferson naturally recognized that conflict may well arise; such conflict, however, would produce "less mischief than if one [branch] is set over the other." Surely, if the Founders had intended to set one branch over the other, they would have said so. Surely, as a matter of democratic theory, Jefferson is right that the elected branches can not be less equal than the judiciary. The elected branches must have rights at least equal with unelected judges to determine the meaning of the Constitution. Judicial supremacy, said Jefferson with inexorable logic, could not, in the long run, coexist with democracy.

In a letter to Spencer Roane, Jefferson, then age 75, sharpened his point. It is "an axiom of eternal truth in politics, that whatever power in any government is independent [unchecked], is *absolute* also: in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes" (emphasis added). Judges who cannot be removed are "the most suspect source of decision in a democratic government." Judges are "effectually independent of the nation." Finally, the "most suspect source of decision" remains suspect even if it is made up of the best men in the country: "it is the office of a good judge to enlarge his jurisdiction."

Judicial review, in the hands of a "strict constructionist" judge, is like a loaded gun: dangerous, but not necessarily fatal. Modern Supreme Court Justices, however, speak of a "living" Constitution. By this, they mean they are free to apply current standards—theirs—to fill in gaps in the Constitution, or even to overrule it.

In recent years, some Supreme Court Justices have been surprisingly open in their opposition to democracy. In October 1985, Justice William Brennan told a Georgetown Law School audience that capital punishment is "under all circumstances cruel and unusual punishment prohibited by the Eighth Amendment." This conclusion ignores the express provision of the Fifth Amendment that people will have to answer for capital crimes with appropriate safeguards: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor be deprived of life, liberty or property, without due process of law." Justice Brennan, on the other hand, believes that capital punishment is "an absolute denial of the executed person's humanity" and "irreversibly degrading to the very essence of human dignity."

The Court's role, as explained by Justice Brennan, to declare "certain values transcendent" and "beyond the reach of temporary political majorities," is not consistent with Jeffersonian democracy. It gives the Court tremendous power. Would *an angel* really want that kind of power?

The position of the modern Justices is, at best, less than candid. For while expressly claiming wide—indeed overriding—discretion, their only claim to authority is the 1787 document. But that document was written in a world that Justice Brennan tells us "is dead and gone." The Justices believe they should apply current standards to the old document. They are a strange group of runaway agents claiming authority their principal never gave them under a document which they feel free to rewrite and reinterpret without any check or balance.

As Jefferson wrote in an 1804 letter to Abigail Adams:

> The judges, believing the law constitutional, had a right to pass a sentence of fine and imprisonment, because that power was placed in their hands by the constitution. But the Executive, believing the law to be unconstitutional, was bound to remit the execution of it; because that power has been confided to him by the constitution. That instrument meant that its co-ordinate branches should be checks on each other. But the opinion which

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gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action, but for the legislature and executive also in their spheres, would make the judiciary a despotic branch.

Learned Hand largely agreed with Jefferson's analysis of judicial review. In *The Bill of Rights* (1958), Hand argued that judicial review is irreconcilable with both the Constitution and democracy. It certainly does not accord, Hand continued, with "the underlying presuppositions of popular government to vest in a chamber, unaccountable to anyone but itself, the power to suppress social experiments which it does not approve." The Constitution does not authorize the Court to "assume the role of a third legislative chamber." Hand did believe that judicial review was a practical necessity in extraordinary cases. Each branch exercising its independent power to interpret the Constitution could lead us, in practice, to two or three different interpretations. Jefferson recognized this possibility when he declared the Alien and Sedition Laws unconstitutional while Congress and the federal courts deemed them valid. Certainly, the branches could come into sharp conflict. But is this so terrible? The theory of checks and balances, after all, assumes a good deal of bumping. Similarly, the theory of federalism assumes that some conflict between the states and the federal government could actually be useful. Conflict, after all, is not just unpleasant, it is the way free people move toward a consensus. As Jefferson explained to William Torrance in June 1815, such conflict would still produce "less mischief than arises from giving to any one of them a control over the others":

> It may be said that contradictory decisions may arise in such a case, and produce inconvenience. This is possible, and is a necessary failing in all human proceedings. Yet the prudence of the public functionaries, and authority of public opinion, will generally produce accommodation.

It is important to remember that the Founders hated the King's judges at least as much as the King. They designed the legislature to make laws. The members are supposed to represent the people of their districts. The introduction of a bill gives the public notice that its interests may be altered. A proposed law may arouse fears among those who will be hurt by it. As Marsilius of Padua wrote, "Anyone can look to see whether a proposed law leans towards the benefit of one or a few persons more than of the others or of the community, and can protest against it." Congress is set up to hear from its constituents, hold hearings, and consider what the law will cost and whom it will hurt. The Founders' purpose was to assure that any law—which of necessity would be enforced against those who did not want it—would be fully considered and supported by public consensus. The process is supposed to be very hard, and normally requires a good deal of compromise. If a majority is not satisfied with the results, it can always refuse to return the representative who voted for it, something it can never do with a federal judge.

The judiciary, since it operates by diktat, does not need to develop a consensus to support its rulings. Indeed, judicial intervention will short-circuit a developing political consensus. For example, in the early 1970's, New York and a dozen other states had developed majorities to agree on some form of legal abortion. The issue was very difficult but democracy was working it out. The Supreme Court, however, in its 1973 *Roe* v. *Wade* decision, removed abortion from the political process by finding it to be constitutionally regulated. Following that decision, the winners did not need the political process, and the latter would no longer be helpful to the losers. Because it is not based on consent, *Roe* v. *Wade* has festered bitterness and violence for 20 years. Those like Justice Brennan who criticize a majoritarian legislative process for not rectifying "claims of minority right" certainly cannot argue that a decision by a majority of judges operates any more effectively in that regard.

European judges do not declare legislative acts to be illegal. In England, Parliament exercises ultimate sovereignty. A European intellectual, looking at our Court's unreviewable power to do just that, would probably say that America is a judicial dictatorship. The legislature in the United States, he would point out, can raise taxes and build roads but the important questions, those that decide what kind of country this is, all end up in the Supreme Court. We might answer that the Court is the "least dangerous" branch, as Alexander Hamilton said; it has no executive or legislative authority; it does not make rules; it merely decides cases that come before it. But the trouble with this answer is that the Court is able to select the cases that come before it. During its 1992-93 term, the Court refused to hear 7,233 cases but accepted 97, or 1.3 percent. In 1950, by contrast, the Court heard 10 percent of the cases brought to it, which indicates it was then acting as a court of appeal over the lower federal courts. The Court's power to pick from among such a large number of cases gives it the practical ability to rule on issues the Justices think important, to act, in effect, as a Court of National Policy. The Justices, of course, may have the power to pursue a legislative agenda, but not exercise it. On the other hand, the Court may decide a lot of things the legislature should be deciding.

The Supreme Court is usually described in political terms—"conservative," "liberal," "moderate," "activist," "restrained"—but the political labels cover up the real problem, which is that the Court may be whatever it chooses: it has the unlimited power to define its own powers. The issue is its power rather than its orientation. Power may be limited in a constitution, but orientation cannot. Nor can orientation be predicted when power is not limited.

The mechanism for everyday federal control over state and local majorities is the 14th Amendment, adopted in 1868. The Bill of Rights only restrained the actions of Congress and the federal government. The 14th Amendment, however, imposed federal power over the actions of the states. It provides that no state shall "deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws." Those words are very general; what do they mean? Initially, in the 1873 *Slaughterhouse Cases*, the Court said it did not find in the amendment's language "any purpose to destroy the main features of the general system" the Founders had established. The Louisiana legislature had granted one company a slaughter-house monopoly, thereby putting its competitors out of business. The competing butchers claimed 14th Amendment protection against the legislative power of their own state, which deprived them of their livelihood. The Louisiana law was hardly appealing but the Court upheld it, saying that to hold otherwise would be "so great a departure from the structure and spirit of our institu-

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tions; when the effect is to fetter and degrade the state governments by subjecting them to the control of Congress" and would constitute "this court a perpetual censor upon all legislation of the States." In less than 20 years, however, the Court reversed itself and took up the "perpetual censor" role it enjoys today.

The 14th Amendment was also the wedge for applying the restraints of the Bill of Rights on state and local governments. Adopted in 1791, the Bill of Rights prohibited the *federal government* from interfering with specified inalienable rights, such as the freedoms of speech and religion. The Bill of Rights *did not* limit the power of the states. The state constitutions and courts, from 1791 to 1937, determined the extent to which a state would enjoy free speech and religion and the other Bill of Rights provisions. Theoretically, a state could have adopted a state religion or established procedures to suppress free speech. Or it could have taken its citizens' property without compensation. No state, of course, wanted to do those things; the people did not desire self-imposed tyranny. Each state's constitution protected against those things. Before the 1937 federal judiciary takeover, America was a constitutional democracy. The 14th Amendment broke up the old system; it required the states to afford to their citizens "due process of law" and "equal protection of the laws," as found by the *federal judiciary*. The Supreme Court, in the 1937 decision in *Palko* v. *Connecticut*, began to "incorporate" the Bill of Rights provisions into the 14th Amendment through the due process clause. This meant the Bill of Rights, after 1937, applied to state and local governments to whatever extent the federal judiciary determined. Incorporation added more vague words—freedom of religion, freedom of speech, right of assembly, unreasonable searches, double jeopardy, self-incrimination, and liberty and due process to the vague words of the 14th Amendment—property, liberty, due process again and equal protection. Beginning around 1890, the Court used these indefinite words to defeat majority positions and to throw out state social and economic legislation such as child labor laws. It used the theory that freedom of contract was part of "liberty" and could not be taken without due process. Under severe pressure from Franklin Roosevelt, the Court abandoned this line in 1937. But it immediately developed a new and more intrusive theory—that while it agreed to restrain itself on economic regulation, it would not restrain itself with respect to what it called "personal" rights. The Court argued that "personal" rights found in the Bill of Rights were more important than property rights. Ever since *Palko* extended the Bill of Rights to state and local government, the Court has been able to enforce broad concepts such as freedom of speech, as it interpreted them, against a state and local majority and against the national majority.

The Court's power, and federal power, were originally held in place by a series of specific barriers as well as the principles of federalism and the separation of powers. During the 19th century, the central government, largely because of the Civil War, gained substantial powers, but the specific barriers that limited it were not directly challenged. They were challenged and began to fall in the 1920's; by the late 1930's and early 1940's they were falling fast; and by the 1960's they were gone.

The old barriers were: (1) *Defined Powers*—The Founders made it very clear that the national government was granted only defined powers and the states reserved all the powers not granted. This barrier collapsed with the Court's 1923 decision in *Massachusetts* v. *Mellon*, determining that the spending power was not limited to acting in aid of a specified power but could be in aid of the "general welfare" clause. (2) *The Commerce Clause*—One of the defined powers given to Congress is the power "to regulate commerce" between the states. How expansively could you read that? In the 1942 case *Wickard* v. *Filburn*, the Court held that a farmer growing wheat for his family had an effect on interstate commerce which authorized regulation of his planting. The Court also held that the commerce power can even be used to regulate matters with slight or no apparent relation to commerce, such as the transportation of plural wives across state lines by Mormons (*Cleveland* v. *U.S.*) and racial discrimination in motels, local restaurants, and recreation parks (on the grounds that the food served had ingredients from other states).

The Founders' purpose was to assure that any law would be fully considered and supported by public consensus. The process is supposed to be very hard, and normally requires a good deal of compromise. If a majority is not satisfied with the results, it can always refuse to return the representative who voted for it, something it can never do with a federal judge.

At first, the Court acted with the support of the majority. The majority wanted the government to ameliorate the Depression and, in the 1950's, to end discrimination. Perhaps there was enough popular support to push through needed constitutional amendments to authorize the action. Perhaps there was not. The Court, by interpretation, extended the national majority's power without amendment. The Court assumed the de facto power to amend the Constitution without securing ratification from three-fourths of the states. The problem with such a power is that it can be used as easily to subvert majority will as to support it.

Under judicial review, the social views of the "adversarial culture" work their way into constitutional law. In March 1994, the Court unanimously overturned a lower court's judgment that the rap group 2 Live Crew had infringed the copyright of Roy Orbison's 1964 song "Oh, Pretty Woman." The rap version, the Court found, could fall under the fair use doctrine, which allows part of a copyrighted work to be used without permission for purposes of criticism, comment, news-reporting, teaching, scholarship, or research. The 2 Live Crew version changed the original's pretty woman walking down the street into a "big hairy woman," "bald-headed woman," and "two-

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timing woman." In *Campbell* v. *Acuff-Rose*, Justice Souter said: "The later words can be taken as a comment on the naiveté of the original of an earlier day, as a rejection of its sentiment that ignores the ugliness of street life and the debasement that it signifies." The Court's words can be taken as a comment on how far judges can remove themselves from the way ordinary people think.

The Court styles itself as the protector of individual rights and self-expression against the will of the oppressive bourgeois majority. Crime, in this context, is a form of self-expression as well as social protest and criticism. The Court routinely overrules the actions of local police, boards of education, and the state laws under which they act. The beneficiaries of the Court's protection are criminals, atheists, homosexuals, flag burners, Indians, illegal immigrants, terrorists, convicts, the mentally ill, and pornographers. The Court calls the deleted state laws "arbitrary" or "without rational basis," extravagant language which, as Robert Nagel points out in his 1989 book *Constitutional Cultures*, shows no respect for the acts of popular assemblies. The Court's attitude is the opposite of Learned Hand's belief that "a law which can get itself enacted is almost sure to have behind it a support which is not wholly unreasonable." As Professor Nagel notes, the Court has acted "to isolate itself from the general culture, retaining ties of language and intellectual approach only to an academic elite."

The Court often accepts as facts things that very few people in the country believe. For example, in May 1994, a federal district court ordered the Washington National Guard to reinstate a lesbian nurse because the military's policy against homosexuals was based solely on prejudice. The Court found: "There is no rational basis for the Government's underlying contention that homosexual orientation equals 'desire or propensity to engage' in homosexual conduct." Most people, judging from their own propensities, are fairly certain that orientation does equal desire.

The majority has given the Court's policies a fair chance—30 years, in fact. Those policies have not been successful. The Court's failure is disturbing because the primary areas the Justices took over—education and law enforcement—are not that complicated. The country handled both successfully in the much-maligned 1950's. Schools and criminal justice, following the majority's policies, educated children and maintained law and order at reasonable cost. Not many people in America think children of either race are better educated and trained today than in the 1950's. According to the FBI Uniform Crime Reports, violent crime (murder and other nonnegligent homicide, rape, aggravated assault and robbery) rose from 288,460 in 1960 to 387,390 in 1965 to 875,910 in 1973 to 1,923,270 in 1992. A *New York Times* poll of June 1994 reports that more than a third of New Yorkers said that because of their fear of crime they had moved to new neighborhoods or were planning to. The majority's solutions might have been as feckless as the Court's, but it is hard to believe.

The federal courts now exercise a level of control over public life that the Papacy would no longer consider. The courts supervise and, in effect, administer schools, prisons, mental hospitals, housing agencies, and tax collectors. Ruth Bader Ginsburg, prior to her confirmation hearings in 1993, wrote to the Senate Judiciary Committee and said that federal judges find these "chores" to be "uncongenial and unwelcome." Had "state and federal legislatures" done a better job, she wrote, "the managerial jobs the courts took on, generally with reluctance and misgivings, could have been avoided." The Court's reluctance has not prevented it from taking over, by 1993, 80 percent of all state prison systems and about 33 percent of the 500 largest local jails. Nor does the courts' reluctance appear in the language of the consent decrees. The decree covering the Bryce Mental Hospital in Alabama, for example, specifies that "Thermostatically controlled hot water shall be provided in adequate quantities and maintained at the required temperature for patient or residential use (110 degrees F at the fixture) and for mechanical dish washing and laundry use (180 degrees F at the equipment)." This kind of demand led Archibald Cox in *The Role of the Supreme Court in American Government* (1976) to conclude that the "individual federal judge became, in effect, the chief executive or administrator of Bryce Hospital."

Similarly, an individual federal judge runs the prison system of South Carolina pursuant to a 1985 consent degree settling a class action brought by the American Civil Liberties Union National Prison Project. The governor and legislature have nothing to say about it. The 169-page decree specifies the standards for food, clothing, gym, library, square feet per convict, and grievance procedures. The decree further specifies a timetable for rehabilitation and the new construction of prisons. It prohibits "triple celling." The state must pay the attorney fees of the ACLU for securing the decree and any future fees incurred in enforcing it. If the federal judge believes the state is not complying with the decree he "shall order immediate relief, which may include population reductions including release" of prisoners.

Prison systems run by federal judges have a different character from those run by state legislatures. A federal judge in North Carolina, James McMillan, has ordered the state to purchase recreational equipment, including three sets of horseshoes, three guitars, five frisbees, fifty decks of playing cards, and a piano. South Carolina, saving itself some legal fees, agreed without court action to a recreational program whose stated purpose was: "To provide for comprehensive recreational activities for inmates on a voluntary basis reasonably comparable to those available in the community." This includes but is not limited to "horseshoes, croquet, badminton, [and] paddleball." Regional tournaments are to be scheduled annually for, among other things, "chess, checkers, and backgammon." The backgammon winner of the Regional Tournament goes on to the SCDC [South Carolina Department of Corrections] Championship Tournament unless the "warden of the host institution" notes a "caution which would prevent the inmate from being transported." Will the released population be able to find competitive backgammon players and appropriate croquet lawns on the outside?

"Liberty," wrote Learned Hand in 1944, "is the product not of institutions, but of a temper, of an attitude toward life; . . . [of a] faith in the sacredness of the individual." Courts do not, in fact, act on neutral principles. The spirit of liberty is the "spirit which is not too sure it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias." Liberty "will prevail only as long as it is supported by the community. . . . A society so riven that the spirit of moderation is gone, no court *can* save; that a society where that spirit flourishes, no court *need* save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish." The ultimate question is whether the rights of in-

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dividuals are safer in the hands of the majority than in the hands of appointed guardians.

With power goes responsibility. The Court, Professor Corwin wrote, has "made itself morally unanswerable for the safety and welfare of the nation to an extent utterly without precedent in judicial annals." A free society, wrote Learned Hand, "will find its own solutions more successfully if it is not constricted by judicial intervention." The Court, at will, takes great chunks of public business away from public control. The public, at some point, will have to regain control of its business. "The judiciary," said Hand, "will then cease to be independent" and "its independence will be well lost." The people, after all, are the only ones who can keep liberty in the country.

Anywhere, U.S.A., 1973

by Harold McCurdy

A father dying, perpetually dying
In surgery. A sister who called her whore.
A boyfriend who by lying and denying
Kept keys to a wife's and, also, to her door.
In a bad year, what girl could ask for more?

True, there were several options. She was virgin
When quasi-semi-engaged to what's-his-name
Ambitious to become a foursquare surgeon—
But hated by her father just the same.
Then there was the erratic hippie flame

Who out of nowhere and into nowhere flitting
Was, after a bout of Ginsberg, all ablaze
To carry her off to Sydney, Australia, sitting
On a mandala in a psychedelic daze
Hallucinating the nine beanrows they would raise.

But she, more inclined to another line of Yeats's
About the rag-and-bone shop of the heart,
Chose to act out a plot from *True Confessions*
(Handbook to millions in the lover's art)
And give her underprivileged hymen a head start.

Her stud was well-equipped, and also able
When he had serviced her to say goodbye
And beat a retreat to the maternal stable,
Leaving it up to her to bear or die
Or have a legal abortion in N.Y.

After the white-walled, sterile, antiseptic
Hospital ministrations, she was back,
Drugged, doctored, emptied, narcoleptic,
Adjusting her daydreams to the rat-race track
With thorazine, and a stiff neck and back.

For she was stiffnecked, and her spinal column
Bore up like drop-forged steel against advice.
It would be sentimental and a bit solemn
To call her an innocent victim of male vice.
She hated herself, in fact; and paid the price.

She could not love unless she was well tortured
By the Impossible. At length she had her man—
One dreaming like her of a small farm and orchard,
A plain white house, a spring-fed brook that ran
By it, and all else on that honest plan.

At last, with him, the Past was over and buried,
And Life dawned fresh and rose with no Remorse,
Except for the one flaw: he was married,
And to a wife unwilling to divorce.
The bottle of pills was ready to hand, of course.

Ambulance sirens, not robins bob-bob-bobbing,
Coma and convulsions, not orchard air!
When she was resurrected, retching and sobbing,
She did not thank them for their tender care,
But stared at the blank walls in blank despair.

In Christian times there could have been repentance,
The slate wiped clean, and in a chastened mood
A humbly murmured Magdalenian sentence,
To say, in effect: "I kiss the Holy Rood,
And will be, O I will, I *will* be good!"

But now? The Ten Commandments and the Decretals
Have met the High Court, and the Court has won.
The pills, the Pill, curettage, and the needles
Assure that the world's business will be done.
Aquarius rises, the New Age has begun.

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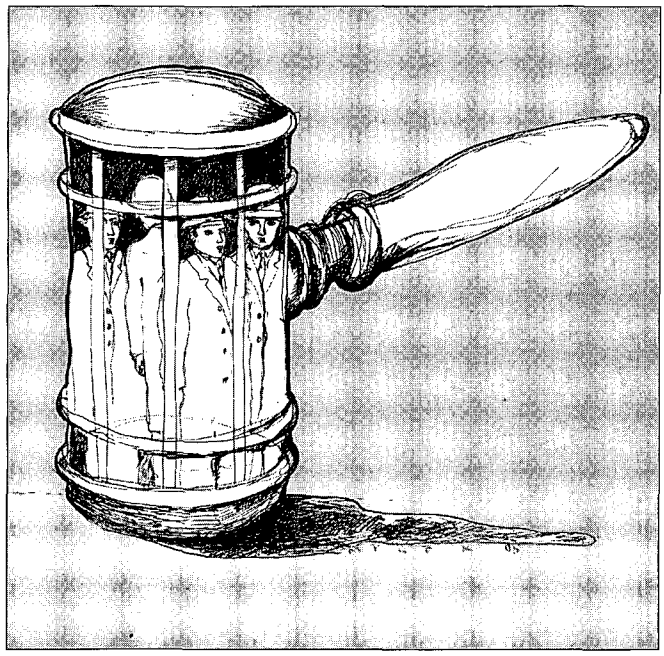
Congress vs. the Second Amendment

by Jerry Woodruff

"A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

—The Second Amendment



Anna Mycek-Wodecki

Like a recidivist criminal free to strike at will, the United States Congress slashed the Bill of Rights last year, tearing through the widely ignored Second Amendment. By itself, the narrow victory in the House of Representatives for the Feinstein/Schumer ban on certain guns and high-capacity magazines was disturbing enough to gunowners. But if the debate that preceded the vote is any indication of the quality of people we send to Congress, all Americans—not just those who own guns—are in serious trouble.

The legislation, sponsored by Representative Charles Schumer (D-NY), was H.R. 4296, a clone of Senator Diane Feinstein's (D-CA) rights-stripping bill that passed the Senate in 1993. It was later merged into the infamous "Crime Bill." Except for guns already possessed, the bill strips Americans of the right to own semiautomatic military look-alikes that have detachable magazines and at least two of the following accessories: a folding stock, a pistol grip that "protrudes conspicuously," a flash suppressor, a bayonet mount, and a grenade launcher.

Ultimately the ban applies to more than 180 weapons. The bill also bans semiautomatic military-style handguns like the MAC 10, as well as all gun magazines that have a capacity of more than ten rounds, except for attached .22 caliber tube magazines. By a curious logic that only lawyers and politicians could take seriously, the bill defines ten-plus magazines as "firearms."

If you ever thought members of Congress were intelligent, thoughtful, honest men and women who take seriously their responsibility to fashion the laws that govern us, take a look at the Congressional Record transcript of the debate on the bill. It shows that many members of Congress simply did not know what they were talking about. Others—the smarter, cleverer ones—pursued their antigun agenda based on fear, bigotry, and intimidation. Steeped in antigun prejudice and a profound disrespect for America's people and traditions, many were dishonest enough to lie and distort the facts just to get their way.

Much of the ignorance displayed was preposterous. One member, Representative Jack Reed (D-RI), after bragging about his experience with weapons he attained during service in the Army, cited "portability" as a feature that makes military look-alikes especially pernicious. Representative Michael Andrews (D-TX) said the ban was needed because it targeted "high-velocity weapons" (whatever those are), and Representative Constance Morella (R-MD) condemned the banned guns because they "fire rapidly with ease"—an apparent attempt to contrast them with nonmilitary semiautomatics, which she evidently believes fire slowly with difficulty.

Representative Jerrold Nadler (D-NY) suggested that because they "spray a large number of rounds," the banned rifles

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and pistols were useless for duck hunting. "These weapons and large capacity clips have no legitimate civilian use, period. They are useless to hunters—five rounds fired into a duck will only make duck soup," he said.

But congressmen who denounce semiautomatics for being more portable than other guns (which of course they are not), and who think rifles and pistols are used to shoot ducks, are the least of our troubles. Representative Herbert Klein (D-NJ) denounced the banned guns because they were allegedly designed for killing people in "close quarters," while Representative Wayne Gilchrest (R-MD) condemned the same weapons for their supposed "long-range capabilities." Representative Barbara Kennelly (D-CT) believed banning the guns will improve the aim of warring drug gangs. According to her, the ban would "end the insanity of innocent bystanders being caught in the crossfire." Another member who imputed magic to law was Representative David Skaggs (D-CO), who claimed that banning guns with the specified military accessories will diminish fear and crime. "[T]hese five features . . . sure help criminals looking to intimidate, wound or kill," he said. (Apparently, people with hunting rifles are less intimidating.) Anxious to get rid of what he does not understand, Representative Don Johnson (D-GA) concocted a fearsome image of weapons that do not even exist. "People . . . cannot understand what legitimate purpose guns that fire 150 rounds without reloading can possibly have," he said. The fact that none of the banned semiautomatic weapons has the capacity he described seems not to have mattered.

Comparisons of semiautomatic rifles with high-tech military equipment like antitank and antiaircraft hardware were the scare tactics of choice. Representative Edward Markey (D-MA) asserted outright that the banned rifles and pistols were in the same class as bazookas, while Representative James Traficant (D-OH) supported the bill because "the Constitution never intended for individuals to strap a Stinger missile on their back and then cite Second Amendment privilege." Representative Reed compared semiautomatic rifles to Claymore mines.

Never mind that the Second Amendment is about a right, not a privilege; never mind that the issue under debate was rifles and pistols, not Stinger missiles, bazookas, or mines. The enemies of the Constitution and their blundering followers were determined to get their way.

During the shredding party, some House members appeared confused about even their own beliefs. Georgia's Representative Johnson told Congress he supported the ban "because, very simply, I believe that it will save lives. Let me be clear, I do not think it will reduce crime in America. . . . What this bill does is to reduce the number of victims of violent crime." Perhaps Mr. Johnson knows what he meant, but no one else does.

In the same nonsensical vein, Representative Tim Penny (D-MN) confessed that the bill will have no effect on crimes involving guns. He then boldly proposed gutting the Bill of Rights by stripping Americans of their rights, all in order to send "a message." To whom this strange "message" should be delivered, Penny did not say. Here are his exact words:

> Will this bill make an appreciable difference in the incidence of gun crimes in America? Probably not. On the other hand, do the provisions of this bill represent a hardship for legitimate gun owners? Most certainly not. . . . This bill is not a solution to the bloody crime culture . . . and it may be true that this vote today is largely symbolic. But symbols can carry a message. I think the message is that any right carried to an extreme can create problems.

To Penny, stripping the Constitution is a message Congress should send, even though the legislation will achieve no beneficial effect.

Representative Marge Roukema (R-NJ) was so confused that she called for legislation to regulate which weapons murderers should use to kill people: "In our country, extensive state laws presently regulate the weapons hunters and sportsmen use for shooting deer, but we are afraid to give the same protection to human beings." Would shorter seasons be in order, perhaps?

Another rights-stripper who revealed that the subject was over his head is Representative William Hughes (D-NJ). He argued that since government is helpless against crime, banning guns makes sense. In his words, "this issue is about common sense. It is not about eliminating crime because there is nothing we can do to eliminate crime."

If, through stupidity, lies, ignorance, and hate, Congress can strip gun owners of rights explicitly protected by the Second Amendment, the rights of all Americans are in jeopardy.

Hughes then lectured his colleagues on wound ballistics, a more technical subject on which he perhaps fancies himself something of an expert: "[Y]ou can survive a shot from a .38, but if you're hit with five rounds from a military-type assault weapon, the chances of your survival are minimal," he said. The trouble is, virtually every .38 holds five or six shots, not one; and five shots from a .38 can be far more devastating than shots from a smaller caliber semiautomatic rifle of the sort under discussion, because the latter shoots military full-metal-jacket ammo designed not to expand. Besides bullet penetration, lethality depends mostly on where the bullet strikes and the size of the wound, not on where the bullet comes from. A victim's prognosis does not depend on a gun's styling.

Spicing the debate with unintentional comedy, Representative Gilchrest, a Vietnam War veteran, implied the opposite of his intended meaning when he said: "I took a bullet from an AK-47; I can attest to their deadliness."

One member reasoned that because banning assault rifles *did not* work in the District of Columbia, the ban should be extended elsewhere. Representative Eleanor Norton of Washington, D.C., said, "your nation's capital bans all guns. We nevertheless are drowning in assault weapons. Only a national ban . . . can stop the carnage." The only problem with Representative Norton's argument is the fact that of the 3,200 homicides

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committed between 1985 and 1993 in her city, none was committed by a rifle of any kind, according to D.C. police. But facts are irrelevant. For her, mere ownership of these guns by the law-abiding causes death among the young. "[C]hildren are being killed by the existence of these weapons," she claimed.

In a spectacularly goofy moment not rare in congressional debate, Democratic Representative Butler Derrick of South Carolina's embarrassed third district went so far as to predict doom for the republic if the ban did not pass: "Mr. Chairman, if this bill fails today, we are no longer a democracy." So certain was he that the country could not endure another day with the Second Amendment intact, he said it again seconds later: "Mr. Speaker, if this bill does not pass, we are no longer a free nation."

Representative Johnson, who thought the ban would protect people from crime while failing to reduce crime, dreamed up a ghoulish image: "I leave with this question: If a madman walks into a fast food restaurant where your wife and children are eating, would you rather he have a six-shooter or a weapon that can wipe out every person in the building? That's what this bill is about."

The obvious reply to this nonsense (and that is what it is, for any madman can have *two* six-shooters, or multiple 10-round magazines) is this: If a madman walks into a fast-food restaurant intent on shooting everyone, would you rather that the patrons be armed or unarmed? Or how about this: If, in the middle of a riot, the police abandon you and your family to face a murderous mob of several hundred people, would you feel safer with a small six-shooter or a semiautomatic with a 30-round magazine?

Not all of the ignorance was silly; some of it was pathetic. As if the Second Amendment were about the right to some kind of amusement, Representative Anna Eshoo (D-CA) claimed that "none [of the banned guns] are used for hunting or other sporting purposes," a claim made by several others, including Representative Louise Slaughter (D-NY) who said flatly that the banned guns "are not used . . . for target shooting." That will no doubt come as news to the hundreds of thousands of gun owners who show up at target ranges every day with shooting-match models of AR-15's and M1-A's. But just to keep all the bases covered, Representative Steny Hoyer (D-MD) went further, implying no one should use them for target shooting: "[T]he weapons which we are attempting to ban are designed for military purposes and have no place in sport or recreational use."

In general, the haters of gun sports seemed unable to decide whether the guns were used for target shooting. Typical were the comments of Representative Michael Castle (R-DE), who simply dismissed the subject because it was something he had not personally noticed: "Well, we hear they are used in target practice. I do not know of a lot of target practice, frankly, in which these are used." Since he does not know anyone who uses these guns for target shooting, why should he care if they are banned?

Despite its extent, this Grand Canyon of ignorance was easily overshadowed by the dark clouds of lies and deception generated by the rights-stripping forces. The biggest lie, repeated ad nauseam, was that these guns are in general use by the military. Remarks by Representative Thomas Andrews (D-ME) were typical. He said the issue before Congress was "a vote to ban from our streets military assault weapons that were designed to kill on-rushing enemy troops in close combat, killing machines designed to kill large numbers of people in very short periods of time." But no military on the face of the globe undertakes an assault by troops armed with semiautomatic weapons. As every weapons manufacturer knows, these semiautomatic sporting versions, unlike the full-auto military weapons, were designed under the ever-watchful eyes of the BATF, not for the military but for the consumer shooting sports market.

Mr. Andrews and his pals simply lied.

Representative Schumer, the mastermind behind the gun ban in the House, confidently leaped beyond credibility with his claim that semiautomatics have no lawful uses: "[L]et us not fool anybody, we know that these guns are not used for hunting, we know that these guns are not used for self-defense, and we know in only very limited cases are they used for target shooting." Korean shopowners in Los Angeles know full well how useful they are for self-defense, as does anyone who saw these besieged people on television brandishing AR-15's during riots when the government's well-armed police abandoned the taxpayers to looting, murdering mobs. It is questionable, to say the least, for policymakers or anyone else to suggest that manual-loading hunting rifles are somehow appropriate for self-defense and target shooting, but that semiautomatics are not.

The lie that semiautomatic rifles with largely cosmetic military accessories have no "legitimate" use was a recurring theme, accompanied by insults to gun owners. Typical was the slur voiced by Representative John Porter (R-IL), who described Americans who own any of the banned weapons as felons plotting their next crime: "These are weapons with no hunting, sporting, or other legitimate purposes and for which there is no reason for anyone to own except to aid in the commission of a crime."

Fanning hatred by depicting gun owners as thugs was an important tactic to lure support from undecided members ignorant about guns. Representative Klein, for example, invented his own statistic to legitimize his bigotry. "Ninety percent of these weapons are in the hands of criminals," he claimed. His "statistic" is a pure fabrication that even the most rabid antigun bigots do not claim.

Many members of Congress preferred direct attacks on gun owners and their advocates. Representative Derrick, for example, smeared gun owners as well as his own colleagues as the pawns of spidery gun manufacturers: "This debate is not being controlled by our constituents, it is not being controlled by the 80 percent out there [who support the ban]. It is being controlled by a minority here . . . that are again controlled by gun dealers and gun manufacturers primarily." Since the leadership on both sides agreed to provide one hour for each side to present arguments, Derrick's tantrum about who "controlled" the debate made no sense. Its only purpose was to smear sportsmen with outdated Marxist imagery about 19th-century arms barons.

Others in Congress, as if in some schoolyard shouting match, smeared the National Rifle Association with juvenile epithets. Representative Cardiss Collins (D-IL) called NRA members "John Wayne wannabes," adding, "nobody really agrees with their views because Americans know that the NRA stands for Not Really Aware, or in Need of a Reality Adjustment. They must be stopped." "We are tired of their manly mantras," said Representative Norton. "Let's stand up to the NRA," echoed Representative Nita Lowey (D-NY). Representative Carolyn

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Maloney (D-NY) claimed, "The 'R' in NRA no longer stands for 'Rifle.' I say it stands for 'Reprehensible.'" With a viciousness toward the citizenry rarely exhibited by public officials, Maloney charged the NRA with endorsing the murder of schoolchildren: "[T]he NRA argument [is] that the Second Amendment should allow some screwball with a 'streetsweeper' to blow away whole playgrounds full of [children]."

After smearing gun owners and the NRA, the rights-strippers lied about the bill itself, falsely moderating the extent of the ban in another attempt to sway fence-sitting congressmen. Although the bill outlaws all ten-plus magazines and roughly *180* guns, only 19 of which are named by the bill, here is how the supporters depicted the legislation:

Representative Morella: "It bans only 19 assault weapons . . ."
Representative Gilchrest: This is "a bill to ban the manufacture and sale of 19 specific types of assault weapons . . ."
Representative Cynthia McKinney (D-GA): The bill is a "ban of 19 specific guns . . ."
Representative Lowey: "[T]hese 19 specific weapons are used disproportionately in crime . . ."
Representative Hughes: "It will eliminate 19 weapons, not as many as has been suggested . . ."
Representative Penny: "Today's measure is tighter and more defensible, listing 19 specific weapons . . ."
Representative Eric Fingerhut (D-OH): The bill "will ban the manufacture and possession of 19 semiautomatic assault weapons . . ."

The list goes on and on. At least a dozen more congressmen made the same false claim. Not only did they lie about the effect of the legislation, they failed to tell the truth about use of the banned guns in crimes. After "assault weapons" showed up more frequently among BATF gun traces requested by police agencies, antigun advocates distorted the reality that gun traces represent in order to bludgeon the Second Amendment. The Congressional Research Service (CRS), an arm of Congress, quoted BATF itself in a report: "BATF does not always know if a firearm being traced has been used in a crime . . . sometimes a firearm is traced simply to determine the rightful owner after it is found by a law enforcement agency." CRS added, "firearms selected for tracing *do not* constitute a random sample [of guns used in crime] and *cannot* be considered representative of the larger universe of all firearms used by criminals or any subset of that universe." CRS reminded Congress that BATF *"noted it is not possible to determine if traced firearms are related to criminal activity."* (Emphases added.) BATF itself cautioned, "concluding that assault weapons are used in 1 of 10 firearms-related crimes is tenuous at best since our traces . . . may not be truly representative of all crimes."

All this information was delivered to Congress *long before* the debate on the gun ban. Now take a look at how BATF gun traces were described by the men and women who have been elected with the public trust to make our laws:

Representative Derrick: "From 1990 to 1993, the percent of firearms traced [by BATF] that were assault weapons rose from 5.9 to 8.1 percent. Since studies show that assault weapons make up only one percent of the firearms in circulation, assault weapons are in proportion used more often to commit crimes."
Representative Slaughter: "[W]hen a firearm is used for crime, it is 19 times more likely to be an assault weapon than some other type of gun."
Representative Timothy Roemer (D-IN): "[T]his one percent is used for over eight percent of criminal activity."
Representative Klein: "Although they are only one percent of all guns, they account for nearly ten percent of violent crimes."
Representative Morella: "After all, although semiautomatic assault weapons are less than one percent of this nation's privately owned guns, they accounted for 8.4 percent of all violence traced to crime from 1988 to 1991."
Representative John Conyers (D-MI): "An assault weapon is 20 times more likely to be used in crime . . ."
Representative Rosa DeLauro (D-CT): "Assault weapons comprise less than one percent of the guns in circulation . . . yet they account for eight percent of the guns traced in the investigation of criminal activity."
Representative Lowey: "The ATF has compiled tracing data that shows that these 19 specific weapons are used disproportionately in violent crimes."
Representative Vic Fazio (D-CA): "[T]he ATF reports in 1989, assault weapons made up ten percent of guns traced in crimes."
Representative Schumer: "[T]hey are one percent of the weapons with eight percent of the killing."
Representative Skaggs: "Assault weapons . . . account for somewhere between .5 and one percent of all guns . . . but they're 10 to 20 times more likely to be involved in a crime."

The truth is that *less than four percent* of all homicides in the United States are committed with rifles of any type and *less than one percent* of homicides involve rifles of a military caliber, according to the FBI Uniform Crime Reports for 1990. By contrast, fists and feet are used to kill five percent of victims, and knives account for 14.5 percent of murder weapons.

Although this information is widely available, and indeed was made available to Congress, the bill passed the House on May 5, 1994, by a vote of 216 to 214, ensuring its consideration by a conference committee on the so-called "Crime Bill."

The House debate and passage of the bill painfully confirm what many Americans already suspect about their elected representatives—namely, that these men and women, despite their carefully crafted media images, make decisions on laws that affect the lives of millions of people based less on careful, honest reasoning than on blind prejudice and mendacity. If, through stupidity, lies, ignorance, and hate, Congress can strip gun owners of rights explicitly protected by the Second Amendment, the rights of all Americans are in jeopardy.

For gun owners, the worst may be yet to come. During the debate, Representative Sidney Yates (D-IL) summarized the views of many of his colleagues and other public officials when he claimed, "Nowhere in the basic document of the United States is there a Constitutional right, written or implied, giving an individual a separate right to bear arms."

No one rose to refute him. ©

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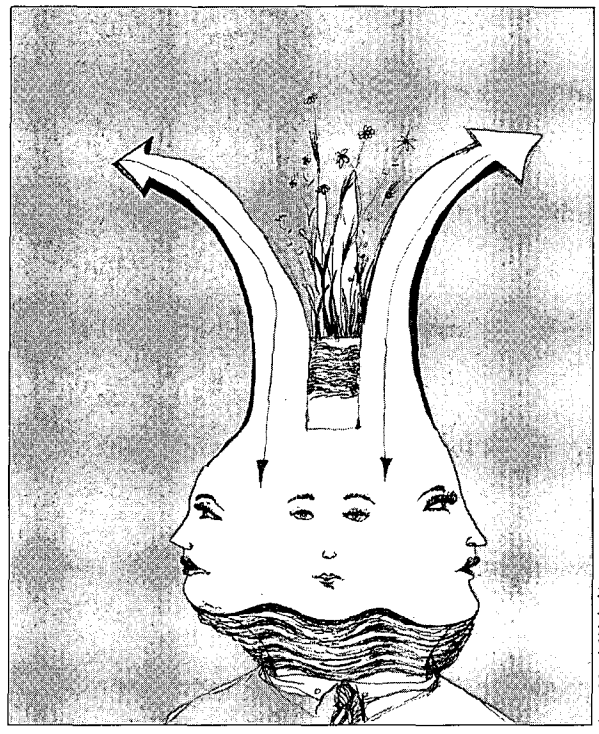
Federalism vs. Secession

by Ronin Colman

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."
—The Tenth Amendment



Anna Mycek-Wodecki

Following the passage of the national gun ban wrapped in pork, Representatives Gingrich and Gephardt congratulated each other for their bipartisan cooperation and remarked how much they looked forward to working together on the nationalization of health care. But they failed to account for one political reality: a large number of citizens, concentrated in the Intermountain West, persist in behaving as if the Constitution were still the law of the land. They interpret the Constitution as a document that severely restricts the purview of the federal government, and it is on that basis that they consent to be governed.

Before Ronald Reagan's ascension to nominal control of the executive branch in 1980, conservatives devoted much effort to promoting the seemingly lost cause of states' rights and federalism. Centered in the South, the battle encompassed everything from the usurpation of state sovereignty by the national government in the enforcement, by the standing army, of desegregation to the passage of the various "civil rights" acts in the 1960's. While conservative Southerners correctly saw this "Second Reconstruction" as a fight for the preservation of their regional culture and defense of their legal sovereignty, the philosopher kings of the day succeeded in portraying white Southerners as ignorant, inbred, gun-toting, militant racists bent on keeping good, decent, hardworking, original thinkers like "Dr." King from sitting next to them at the local soda fountain. Ignorant of the Constitution and unwilling to see their own future in the subjugated South, the majority of Americans turned their back on the Southern states and congratulated themselves on their own liberalism.

During the Reagan/Bush years, many conservatives, thinking they had won the ball game, stopped talking about federalism and fell into the trap of believing in federally mandated "one size fits all" solutions to local problems. Take, for example, the national "War on Drugs." This resulted in the creation of a host of new federal crimes and draconian asset forfeiture laws that make targets out of citizens who have the misfortune to possess land coveted by some bureaucratic—or rather kleptocratic—agency. Having accepted the "federalization" of criminal law, these same conservatives turn a blind eye to the increasing militarization of federal law enforcement. Our legislature, once very hesitant to allow the FBI to carry guns, now permits 53 federal agencies to arm its agents and make arrests. Even the Environmental Protection Agency has a SWAT team. Indeed, scarcely a murmur is heard from Congress when its minions act like soldiers of an occupying military force, conducting no-knock raids dressed in masks and ninja suits while brandishing German submachine guns.

In the absence of objections from either national political

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party (much less the Beltway intelligentsia), the federal government has assumed limitless de facto power over the affairs of the states and the activities of their citizens. Last March, Colorado State Representative (now State Senator) Charles Duke decided to do something about this. He introduced House Joint Resolution 94. When it passed in May, as H.R. 1035, the Colorado legislature served notice on the national government: "Resolved, the State of Colorado hereby claims sovereignty under the Tenth Amendment [and] the federal government, as our agent, is hereby instructed to cease and desist, effective immediately, mandates that are beyond the scope of its authority under the Tenth Amendment to the Constitution of the United States."

Generally unreported by the mainstream media, Senator Duke's resolution was the subject of a column by Walter Williams. Coincidentally, May was the month that the House of Representatives passed its bipartisan semiautomatic firearm and magazine ban, later incorporated into the national "Crime Bill" signed into law in September. Not surprisingly, a large number of disenfranchised gun owners (the law declared around 30 million lawfully owned guns to be "assault weapons") took keen interest in Dr. Williams' suggestion that the states could and should stand up to unconstitutional federal mandates "before the Congress completes its agenda to disarm us through weakening our Second Amendment protections." This column made the "chain fax" circuit in record time and rallied further support for a movement that was already sweeping the West.

The Tenth Amendment/State Sovereignty/Secession movement appears to be a spontaneous mass movement. There is no charismatic leader or well-funded "public interest group" leading the charge. On the contrary, the movement seems to be made up of people whose only common traits are an adamant refusal to live under tyranny and a hard-wired connection to the infobahn. The individual groups are too numerous to list, but they seem to fall into one of three ideologically allied camps, differing only on the means to the end.

The Tenth Amendment supporters are by far the most prolific. They have followed the lead of Senator Duke and passed, in various forms, Tenth Amendment resolutions in Hawaii, Ohio, Missouri, Illinois, Oklahoma, Louisiana, Michigan, Pennsylvania, and California. Tenth Amendment resolutions are reportedly pending in an additional 22 state legislatures.

The obvious question is "so what?" The states send hundreds of resolutions to Congress each year which have no legal weight whatsoever and are easy to pass. The practical effect is to embolden the state legislature that initiated the Tenth Amendment claim to pass enabling legislation with some teeth in it. Once again the Colorado State Legislature has led the charge by passing SB94-157, the Federal Mandates Act. This nicely written piece of legislation is a Great Society stalwart's nightmare. It requires, among other things, that a state agency requesting money to comply with a federal mandate list the clause of the Constitution that empowered Congress to make the law to begin with. If it is not there, the law is considered null and void in the state of Colorado. Revisionist case law does not count.

"Needless to say, the feds may be unimpressed with a statement of sovereignty and attempt to impose economic sanctions against the state, as has become their pattern over the years," says Senator Duke. He proposes that the state collect various taxes on behalf of the national government, such as federal gasoline and income taxes, then make monthly disbursements of these escrowed funds only as long as the national government behaves itself. Senator Duke continues, "Every dollar disbursed by the feds originated somewhere through the sweat of someone's labor. The sovereignty proclaimed by the state simply inserts the authority of the state, guaranteed by the U.S. Constitution, at a point to reassert control which should have never been given over."

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The major weakness in the Tenth Amendment proponent's position is its reliance upon the federal government and its hired guns, the judiciary, to obey the law of the land. Last October 11, the Supreme Court refused to hear a Tenth Amendment case brought by Kansas against the Fair Labor Standards Act and the Age Discrimination and Employment Act. A Tenth Amendment case against the national law that makes it a felony to own a gun and live within 1000 feet of a school came before the high court on November 8. The NRA has also been successful in attacking the Brady Bill on Tenth Amendment grounds in the lower courts. Nevertheless, few will be surprised if the high court rules, as usual, that the omnipotent Commerce Clause supersedes everything. As Tocqueville predicted, a gradual but continuous shift in power from the states to the national government has occurred as a result of the requirement that disputes between the parties be resolved in the national courts.

Taking a somewhat stronger position, yet still working within the established national system, Governors Mike Leavitt of Utah and Ben Nelson of Nebraska have called for a national "conference of states" in 1995 to address and correct the imbalance of power. Governor Fife Symington of Arizona has joined the call, and the Arizona legislature has created a one-million-dollar Constitutional Defense Council that will sue the national government on Tenth Amendment grounds. While Governor Leavitt supports the Tenth Amendment movement, he

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does not appear to hold much hope for its success. "Congress will not fix this problem," writes Governor Leavitt. "Congress has every incentive to continue the trend toward centralization, and the federal bureaucracy has even more. And we cannot depend on the courts. Over the last 60 years, the federal courts have generally not been friendly to states in their disputes with the federal government." Governor Leavitt insists that the Conference of States remain scrupulously bipartisan and stick to the single issue—restoring state sovereignty—not getting caught up in gun control, abortion, school prayer, or whatever.

The conference will ask each state to send five delegates to the conference, four of them legislators, two from each party and two from each house. The fifth delegate will be the governor. The 250 delegates will then produce a "States Petition" consisting of specific amendments to the Constitution that shift the balance of power in the direction of the states. For example, an amendment allowing the states to initiate constitutional amendments and to "sunset" any law made by the national government not dealing with defense and foreign affairs has been suggested by at least one group. The delegates would take the States Petition back to their respective state houses for ratification. They then would "ask" Congress to pass the amendments as written and send them back to the states for ratification. Should Congress refuse, or tamper with the amendments, the threat of convening an unlimited Constitutional Convention which could dissolve the union would probably become a reality.

The Montana Shooting Sports Association (P.O. Box 4924, Missoula, Montana 59806) proposes a somewhat more direct solution to the problem of silly laws generated by the government: it proposes the "s" word, secession from the union. Timed to coincide with President Clinton's signing of the Crime Bill, the MSSA announced its Freedom Initiative. "When Montana agreed to become a state, there was a basic presumption that the people of Montana would always be protected from the federal government by the Bill of Rights," says MSSA President Gary Marbut. "Congress has abridged that presumption, and thereby nullified Montana's contract with the other states. Therefore we have no further legal obligation to maintain the Compact with the United States. . . . There may be some debate about what the Second Amendment means to the Supreme Court or the people of Peoria, but there is no question about what the Second Amendment means to the people of Montana. 'The great purpose,' as Patrick Henry said, 'is that every man be armed.' Congress is willing to trade our rights for temporary political gain, but we will not submit to this accelerating betrayal of our constitutional rights. We choose to opt out."

Montana's constitution may be changed only by a vote of the people. MSSA will begin gathering signatures in June (the earliest date allowed by law). Assuming it is successful, it needs only 20,000 signatures—the Freedom Initiative will appear on the Montana Ballot in November 1996, just below Clinton's name. If enacted, Article One of the Montana Constitution will be replaced with one that not only declares Montana to be a "free, sovereign and independent constitutional republic," but also puts it on a hard money standard and forbids the Nation of Montana to create or allow a monopoly bank to borrow money. No other nation may own land within Montana, and Montana specifically disentangles itself from American treaty obligations.

The ideas proposed by the MSSA are unique only in their candor. Most of the states' rights supporters I spoke with would, if pressed, concede that the legal dissolution of the union or legal secession were legitimate options once all other legal avenues for the restoration of constitutional federalism had been exhausted.

Whenever the subject of secession comes up, someone invariably says that the issue was "settled" during the War Between the States. While the South lost the war, it does not follow that its legal position was incorrect. Joseph Stumph, author of the Ultimatum Resolution and director of the Committee of 50 States (4808 Quailbrook Circle, Salt Lake City, Utah 84118) is one of the premier scholars on the subject. "In essence, our federal government is the agent of all state governments," writes Stumph in the Ultimatum Resolution. "The states are the creator and the federal government is the creature. It is axiomatic, or self-evident, that the creature cannot exceed the creator. The agent cannot exceed the authority granted by its principle. Any attempt to do so is *ultra vires*, or without authority, and a usurpation of its power." Thus, "if the federal government no longer obeys the will of the states, and is continually in violation of the contract of agency, each state is free to withdraw its support of the federal government and select, or create, another agent to carry out the collective will of the states."

Some might argue that although the original states were indeed sovereign nations prior to ratifying the Constitution, most states that joined the union over the years were carved out of land purchased by the national government and have no such claim to sovereignty. Not according to the "Equal Footing Doctrine." Under *Coyle* v. *Smith* (1911), all states are on an "equal footing" with each other, regardless of the terms under which they joined the union. Since the original states owned all the land within their borders, the "federal land" that makes up the bulk of the Western states became de jure property of the state upon annexation.

At first glance it may seem surprising that the next battle for liberty is originating in the West. But the West was settled in large part by Southerners fleeing Reconstruction. The desire to be left alone runs in the veins of many citizens of the Intermountain West, as does the willingness to fight for that freedom. Nor has the spark of liberty been completely extinguished in the South. A new organization called The Southern League (P.O. Box 40910, Tuscaloosa, Alabama 35404) promises to rekindle the flame.

"The Jeffersonian principle that a free people may change its government if that government threatens life, liberty, and property is the cornerstone of our political tradition. Since the present central government has consistently violated the original compact of 1789, we hold that the time has come for the Southern people to engage in a serious discussion of political divorce," writes Professor Michael Hill, president of The Southern League, in the inaugural issue of the *Southern Patriot*. "The Southern League does not advocate the overthrow of the United States government; on the contrary, we wish simply that Southerners in their states be left alone to run their own affairs with the independence they enjoyed under the Constitution of 1787." What people are saying all over the West and South is simply this: either the Constitution can and will be restored or the people in the separate states will be morally, politically, and legally free to pursue their own destinies.

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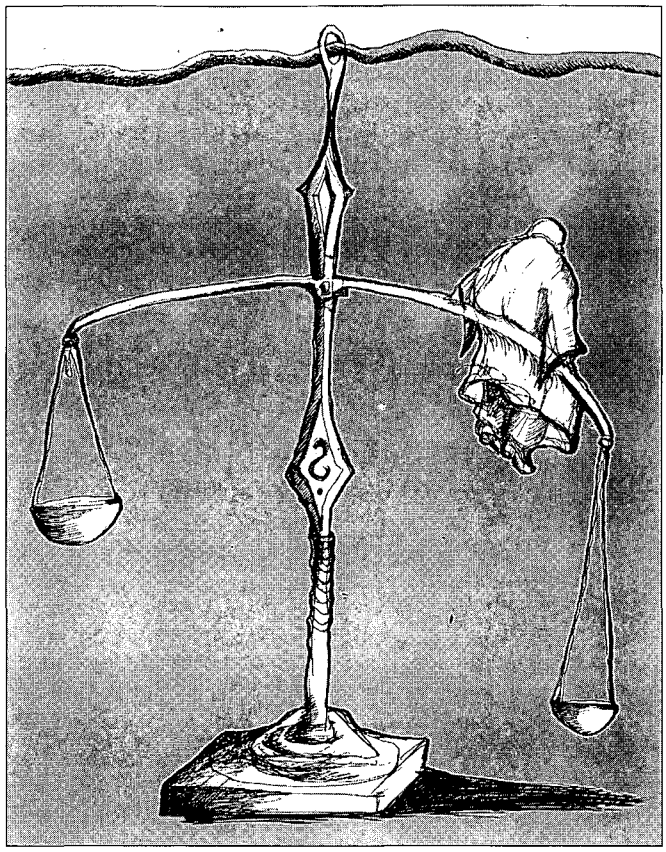
Jury-Rigging

by Christopher Baldwin



Anna Mycek-Wodecki

Throughout our legal history we are familiar with incidents of jury-tampering, the act of buying off or frightening one or more of the 12 men good and true called upon to decide a case. This is done to predetermine a verdict, usually to assure a "not guilty." We have heard of vicious gangsters, corrupt union bosses, and crooked politicians conspiring to rig juries. But who has ever heard of a jury rigging itself? Recently I served on one attempting to do just that. Not for money nor from blackmail. More subtle pressures obtained, psychological pressures, emotional pressures, moral pressures.

The question of jury psychology has long attracted attention (recall the film *Twelve Angry Men*), but never more than today, when we have famous cases involving the likes of Rodney King, Reginald Denny, the Menendez brothers, and John and Lorena Bobbitt. Court TV is there to bring them to us live and uncensored. Mesmerized, we watch the acquittals roll in: Not Guilty, Not Guilty, Hung Jury, Not Guilty by reason of temporary insanity—take six weeks in a clinic. And we sit bewildered, as the latest crime statistics are published. Yes, they are skyrocketing, but not to worry: the citizenry is astir and congressmen are introducing federal legislation. This month's crime bill will pass and become law. And so there will be even more cases for juries to decide.

How will they decide them? How *should* they decide them? Will anything change? George P. Fletcher, law professor at Columbia University, writes that the only check on wayward juries is for "our judges to be more vigilant against speculative lines of attack that play on jurors' fears with buzz words like child abuse and racism. They must rein in defense lawyers who have wakened to the potential of putting the victim on trial."

Fletcher is probably right, but it is delusive to think judges are going to strip lawyers of a powerful weapon. Attorneys will continue to incite jurors' fears, for there is a fortune in gold to be mined from that lode. Fear. It was a palpable presence in the jury room where I sat, a 13th juror. It infected nearly everyone. The squalid little case I will recount is a useful lens for viewing the celebrated, protracted, nationally known media events, because, in a run-of-the-mill trial with a nonentity of a defendant, a verdict that should have been reached in 15 minutes instead took four anguished days to reach.

The venue for this case was the city of Paterson in Passaic County, New Jersey. Anyone familiar with the area will immediately know from where the jury was culled: suburban towns like Little Falls, Clifton, West Paterson, and Wayne. Strolling through the courthouse common room and its environs where the various jury panels await their summons to the courtroom, I was struck by the sea of white faces: people queued up at the snack bar, some slouched in hard plastic chairs scanning newspapers and magazines, others watched the big television and sipped coffee from cardboard cups, still others made calls at pay phones. All wore the round "Passaic County Juror" buttons pinned sheepishly to their chests and stood out, in this heavily black and Hispanic town, from the clerical staff of the courthouse and municipal building, who are also mostly black and

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Hispanic.

The jurors had never met before, but they knew each other well enough. They are, after all, neighbors, working middle-class folk. They earn from 20 to 60 thousand dollars a year and range in age from 21 to 65. They dress in a similar neat suburban fashion, slacks, open-collared sport shirts, sweaters, skirts, dresses. They dine in many of the same restaurants, frequent many of the same movie theaters, vote in many of the same schoolhouses. They converse while they wait. They discuss their jobs, their families, their bad luck in being called here. For many it was their first jury assignment. The county sheriff had already given them a pep talk and shown them a 30-minute film about the glories of jury duty designed to stoke their civic consciences. They were bored and unimpressed by it and relieved when it ended. They wondered what type of cases they would draw. They discussed the jury system in general and an underlying theme emerged: a fervent hope that they would not be called upon to decide anything of consequence. Should this occur, however, many prepared excuses for the judge in order to be thrown off the case. Prejudice, toward the plaintiff, the defendant, or both, was the favorite. Soon a uniformed officer of the court appeared and instructed four panels to report to the courtroom. Quickly they gathered themselves and were led out in double rows and disappeared down the hallway.

Up in the courtroom we fidgeted in our seats in the jury box and answered questions by the attorneys prior to their challenges. We took note of the defendant, a young Hispanic male in jacket and tie sitting with folded hands and glowering at us menacingly, and of the reporters from the local paper wearing press badges. We were warned by the bench not to speak with them nor read any accounts of the case while it was ongoing.

Once the jury was finalized we heard the charges. There were four: attempted murder, aggravated assault, resisting arrest, willful and malicious destruction of property. On a summer's night six months back, we were told by the prosecutor, a paunchy, disheveled man, the enraged defendant, a Cuban immigrant who had come here when Fidel Castro emptied his jails, had burst into his ex-girlfriend's apartment and attempted to kill her with a semiautomatic pistol. Five wild rounds were fired before he made off in a vehicle. The police were called and a high-speed chase ensued. When the cops apprehended him he threatened them with the pistol, which was wrested from him, then sought to flee on foot, whereupon he was pursued again, caught, and taken into custody.

The key witness against him, the plaintiff, was the ex-girlfriend, a young black woman. Called to testify by the prosecutor, she recounted the events of that night. Asked why he would want to kill her, she defined it as retaliatory. She stated that she had at one time lived with the defendant but after a brief period had put him out of her apartment because of threats and physical beatings. She went on to describe his abuse in brutal detail. Secondary witnesses were then called to describe events and corroborate the girl's story. All the testimony was straightforward and hung together.

Then came the defense. The girl resumed the stand. The public defender, a big well-built man in his 30's, elegantly attired and beautifully articulate, went to work on her with gusto and flair. He was clearly looking to go places, and Passaic County was not one of them. He sauntered over and leaned rakishly against the railing of the jury box as he delivered his questions, so close to us that we could smell his cologne.

"Miss Smith," he said to her, "please tell the jury how you met the defendant."

"I was sittin' in my car one day on the street and he come up to me and started to talk," she said.

"What did he say?"

"He said I have a good body and he want to know me."

"How soon after that did you commence living with him?"

The girl hesitated. "That night."

The attorney paused to let this sink in. Then he said, "It is my understanding that you have a two-year-old child by another man. Did this child live with you and the defendant?"

"Well," she said, "For a couple days it did. Then I gave the baby to my mother to keep."

The lawyer scowled. "Let me understand this," he said, looking at us. "You had a two-year-old baby that you suddenly abandoned to your mother so you could live freely with a man you had met two days earlier on the street. Is that correct?"

"Yes."

Looking at each of us in turn, he shook his head. I glanced at the other jurors for a reaction. All but one, whose head was down with eyes closed, softly snoring, were riveted.

The cross-examination wound down. Defense got her to admit practicing rough sex, then to withholding sex when the boyfriend did not work and bring home a paycheck. Then, said defense, she threw him out on the street. His frustrations mounted when she refused to see him to discuss reconciliation. She was his common-law wife and most couples are prone to domestic quarrels, and really, was she not overreacting by pressing grave charges that could send a man to prison for a long while? Or was she trying to wreak vengeance via the court?

Seeing trouble staring him in the face with 24 eyes, the prosecutor frantically did his best during summation to counter the defense by recapitulating the facts, battered doors and bullet holes in the molding, and lectured us on our duty to convict. The defense, perfectly assessing the jury's mindset, focused on reasonable doubt and Miss Smith's dubious character, linking the two. Despite the fact the defendant was no angel, he said, we must acquit. After one full day of testimony, we returned the following morning to begin deliberations.

From the moment we entered, there was tension in the jury room. At first, little cliques of two or three people formed, joking about the testimony and giggling nervously. Someone called us to order and we introduced ourselves and elected a foreman, a woman named Sheila. All white, we were composed equally of men and women. Then a poll was taken. The results were startling: ten votes for acquittal on *all* charges. There was really very little to deliberate about, the ten agreed, nodding sagely. Voting for conviction, only me and one other.

Right then the revolt began. And as with all revolts, a leader spontaneously arose, a man named Don. Tall, thin, fortyish, shaggy-haired and bespectacled, he looked like a reference librarian. In fact, he was a CPA with a wife and two children. Compared with Don, the rock of Gibraltar is made of papier-mâché, as the room discovered to its dismay. Outraged by their attempt to preclude discussion, he removed his glasses and tore

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into them like a tiger.

"What kind of setup is this?" he fumed. "If I didn't know better I'd swear the fix was in. And you," he said scathingly to the juror who had dozed during the trial, "how dare you even talk when you slept through the testimony! That defendant is an animal, guilty as sin. And you all know it." He slammed his fist against the table as the whole room boiled and seethed.

But they fairly tripped over one another in their rush to justify themselves. As I listened it began to dawn on me. These were decent people desperate to escape, and to escape quickly and cheaply. They were reciting almost verbatim the ridiculous legal formulation tossed out by the defense—reasonable doubt—to argue that since no one could know what had transpired between the principals, reasonable doubt existed over the veracity of the girl's account, ergo, the defendant must go free. As to the shooting, well, he might have passed the breaking point. And if the police were chasing, it was natural in Paterson for a Hispanic male to run! And since all the issues were so murky, since reasonable doubt existed down the line, we had no choice but to acquit.

This, then, was the smoke screen, their intellectual underpinning, such as it was. Over the course of four days, as Don and I harangued, harassed, entreated, reasoned with, coaxed, cajoled, scolded, and shamed them, the truth broke through in bits and pieces. It was not evidence but fear and guilt that drove them, and, in an ironic twist, proved a contention of theirs that people are victims of their environment. For those ten jurors were victims of the permissive social environment of the last 30 years, morally disarmed before criminals, naked unto their enemies.

Their visceral beliefs and true reasoning, from their own statements, consisted of the following:

One, fear for their physical safety. "Didn't you see the way he [the defendant] looked at us? He knows who we are. If we convict him, he'll come back and get us later." Sheila, Mary, Nadine.

Two, moral relativity of truth. "We have no right to judge [?!]. We were not privy to their lives. What's true for us might not be true for them. Besides, the truth ultimately can't be known. Maybe she [the plaintiff] had it coming. And she did abandon her child." Mary, Nadine, Frank.

Three, outright moral cowardice. "The responsibility for putting someone away is too heavy and I don't want it on my conscience. We didn't ask to be here." Bill, Henry, Nancy.

Four, racism and white guilt. "Those people live completely differently from us and shouldn't be held to our standards. They're always mistreated and victimized by society." Mary, Nadine, Tom.

Five, lack of moral imagination, denial. "Even though we hear about it all the time, I can't believe someone would commit such violent acts without some justification. There are extenuating circumstances." Keith, Nadine, Mary, Bill, Nancy.

Six, fear of exercising power, misplaced conscience, spinelessness. "I hate to think of myself as an enforcer for the state. Anyway, in the grand scheme of things it really doesn't matter what we do. Crime will be the same whether we convict or acquit." Fred, Denise.

And so there it was. The excuses interlocked and reinforced one another. Back and forth we went, hour by grueling hour, day by weary day. The bailiff came in every few hours to try to hurry us up. The judge had expected a fast decision and was angry we were taking so long. Throughout, Don was magnificent. He spoke more eloquently than any film of civic duty and courage, of the need to stop the barbarians at the gate, of personal responsibility, of recognizing necessity, of the right of the victim to justice. One by one they attacked him with their craven arguments, only to wind up impaled on the sharp spear of his logic. Gradually, imperceptibly at first, we began to turn them. From ten to two it became eight to four by the end of the second day, 16 hours in. Then it was tied. Near the end of the third day, eight to four in our favor. By midday Friday we had it: 12 out of 12 for conviction. Whether by force of argument or sheer exhaustion, we had it. We notified the judge, and he sent word that the defense attorney intended to poll the jury in open court. For certain that fox hoped to pry loose a juror or two and get a mistrial should the verdict be against him. It was a smart tactic that almost worked. A crisis erupted in the jury room. It was one thing for them to convict anonymously, but quite another to stand individually before God and everyone and speak their vote aloud.

They tottered on the brink of declaring a hung jury. But Don steeled them for the final leap in typical fashion. "The hell with the lawyer. Look him straight in the eye when you speak. You can be certain you've done the right thing. I know it, and I want you to know it."

Back in the jury box, 12 men and women rose and confirmed the verdict one by one, "Guilty on all charges." The judge dismissed us. Sentence would be pronounced a month later, and what it was I never learned. At the courtroom exit Don and I stopped and stood together for a moment after everyone had filed out. We did not exchange a word. We looked hard at each other, though, perhaps for memory's sake, shook our heads, grinned, and clasped hands, then went our separate ways.

Since then I have often wondered if the outcome would have been different had Don not sat on that particular jury. Was the Menendez jury like ours? Was Reginald Denny's? Clearly it is difficult in our society to distinguish evil, to call it by its true name, punish it as justly as our wisdom allows, and deter it in the future. Our faculty for ethical decision-making has been warped by moral relativism, psychologism, and alternative lifestyles. There are no longer two sides to every story but 50, all of equal value. Evil deeds are explained away with pseudo-scientific, legalistic, psychosocial mumbojumbo. The jurors in our case were victims of this, their minds rigged in advance, chanting formulas of fear like incantations. Perhaps this is a defense mechanism, a reflexive recoiling from daily horrors. But in doing so we are colluding with the thugs in our midst by rationalizing their crimes and depredations.

The time is long past for us to quit quaking and to accept responsibility for judging and acting upon what is right and just, whether at school, in the street, or in the jury box. We must make choices not to our liking. As J.R.R. Tolkien asks in *The Lord of the Rings*, "How shall a man judge what to do in such times?" "As he ever had judged," said Aragorn. "Good and ill have not changed since yesteryear; nor are they one thing among Elves and Dwarves and another among men. It is a man's part to discern them."

Just so. ◁

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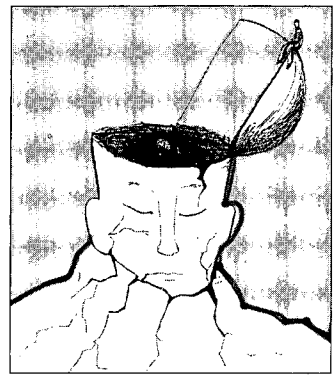
Up From the Ice Age

by Samuel Francis

"Nature knows no equality."
—Luc de Varvenargues


Anna Mycek-Wodecki

The Bell Curve: Intelligence and Class Structure in American Life
by Richard J. Herrnstein and Charles Murray
New York: The Free Press; 845 pp., $30.00

Race, Evolution, and Behavior: A Life History Perspective
by J. Philippe Rushton
New Brunswick: Transaction Publishers; 334 pp., $34.95

◆

For about four years before the publication of *The Bell Curve* last fall, occasional news reports dribbled out tidbits of information about the book and its coauthor. The stories were often pegged to Charles Murray's departure from the neoconservative Manhattan Institute in 1990 because of the institute's discomfort with his plans to research and publish on the *verboten* topic of racial differences in intelligence. When the book finally appeared, at almost exactly the same time as Philippe Rushton's work on the evolution of racial differences, it was the immediate subject of extended and usually vituperative discussion in the country's major newspapers and magazines for a month or more—by which time it had ascended to the dubious but lucrative dignity of the best-sellers list. One of the remarkable features of the book's reception was the utter vapidity and dishonesty of most of the criticism, which ranged from the merely stupid (e.g., Richard Neuhaus' pompous comment in *National Review* that "society depends upon taboos and interdictions" and that therefore the authors should not have published their conclusions) to the outright vicious (e.g., the unfounded claim in the *New Republic* and the *New York Review of Books*, among other publications, that Herrnstein and Murray were, or had relied upon, "neo-Nazis" for their research). But the most remarkable feature of the commentary on *The Bell Curve* was that the obviously coordinated attacks on the book in several different places at almost the same time showed clearly that the national intellectual and verbalist class had been lying in ambush for it for months, if not for years.

The ambush, which on a lesser scale was also sprung on Rushton's work, is understandable, since both books directly challenge the egalitarian and environmentalist ideologies on which the power of the liberal managerial state is founded. Unless the dogma that human beings and their behavior are almost completely the products of their social environment is accepted without question, then the central faith of the managerial state—the feasibility of the ameliorative planning, reconstruction, engineering, and management of social and economic institutions by centralized government—is in vain, and the apparatus of the state ceases to have any purpose other than the preservation of the political and cultural power of elites that depend on the apparatus. Obviously, then, the violation of taboos and interdictions was perceived not just as an intellectual *faux pas* but as a direct assault on the intellectual class itself and the mythologies that undergird its hegemony, just as much as a book published in the Soviet Union defending free market economics would have represented an assault on the communist hegemony. As the counterattacks on Murray and Herrnstein escalated, the vanguard of the managerial state looked increasingly like a trapped animal, whose desperate and frightened eyes dart frantically for some means of escape.

The Herrnstein-Murray thesis is by now pretty well known. The authors argue that intelligence is real and not merely an artificial construct or an ill-defined popular term that has no objective foundation, that intelligence is significantly hereditary and only in part the product of environmental influences, and that intelligence is important because it goes far to determine not only success in life (as measured by educational and occupational achievement and income) but the manifestation or

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absence of various social pathologies and dysfunctions. They support these arguments by close statistical analysis of data pertaining to "cognitive ability" (intelligence) correlated with other data on socioeconomic status, childhood and educational background, criminal history, occupational achievement, and family formation. Through statistical analysis they argue that social dysfunctions (poverty, unemployment, injury rates, crime, broken families, child neglect and abuse, illegitimacy) are more closely correlated with low IQ than with socioeconomic status and that therefore low intelligence and not the social environment bears a causative relationship to these dysfunctions, just as higher IQ bears a causative relationship to successful social behavior.

Despite the hysteria that greeted *The Bell Curve* and its treatment of race and IQ, its chapters on those subjects are perhaps the most disappointing in the book. Herrnstein and Murray are in no sense racialists and in fact share all the common progressivist phobias about discussing race at all or using it as a concept. Thus, they seem uncertain that race even really exists as a valid biological category and rely on the circumlocution "ethnic" to avoid mentioning the subject as much as possible. "What does it mean to be 'black' in America, in racial terms," they mutter, "when the word black (or African-American) can be used for people whose ancestry is more European than African?" In fact, they themselves answer this particular question later on in discussing the pioneering research on African IQ by Professor Richard Lynn of the University of Ulster at Coleraine. While the IQs of American blacks, whose genetic endowment contains a considerable Caucasian contribution due to past interracial breeding, are on average below the mean American white IQ by a significant 15 points (or one standard deviation in statistical jargon, on which Herrnstein and Murray rely too much), Lynn has found that the IQs of the less racially mixed African blacks are on average some 30 points below those of American whites. The meaning of race as a concept, that is, is not falsified by the existence of a racially mixed population in a particular country. Yet despite no small amount of hemming and hawing, the authors do acknowledge the reality of racial differences in intelligence and the hereditary basis of a major part of such differences.

In general, however, *The Bell Curve* is not the best available introduction to the subject of racial differences in IQ. Arthur Jensen's *Straight Talk about Mental Tests*, Daniel Seligman's *A Question of Intelligence*, and Philippe Rushton's new book are all easier to read and to follow, at least as thorough, and rather more compelling and straightforward than what Herrnstein and Murray have published. *The Bell Curve*'s main contribution to racial psychometrics is simply that it has generated so much controversy and attention that it has effectively smashed the taboos surrounding the subject that so many on the left and their poodles on the right are eager to keep. After *The Bell Curve* controversy, discussion of race and government policies about race will be considerably more open and honest than before.

What Herrnstein and Murray do emphasize is their theory that American society is becoming increasingly stratified by intelligence, with the social segregation and polarization of high and low IQs in a way that threatens the historically liberal character of the country. The emergence of a "cognitive elite" monopolizing high social, economic, and political positions may lead to the construction of what the authors call a "custodial state" that will be increasingly authoritarian and even racist, perceiving the stupid, socially pathological, racially different, and resentful cognitive proletariat beneath it both as a threat and as an object of fear.

Unfortunately (or maybe fortunately) they do not prove this thesis, and there seem to be several gaps in their case for it. In the first place, modern technological societies are hardly the first in which high intelligence has led to high social position; this has been true in earlier, premodern, and ancient societies as well. In the second place, in neither premodern nor modern societies is intelligence the only source of social stratification, and in ours as in other societies there will continue to be highly intelligent people who do not do particularly well in life because of personality, circumstance, constraints on opportunities, and other unavoidable barriers to upward mobility, as well as not-so-bright people who rise to the top.

Moreover, of all the social problems this country faces, the prospect of being ruled by people who are too intelligent is surely not one of them. The bureaucratization of modern society in fact means that people move upward in organizations by showing that they are able to think and perform according to established routines, not by being creative or innovative, and the major problem to which *The Bell Curve* points is what the authors call "dysgenesis": the downward pressure on the distribution of cognitive ability in the United States caused by (a) the failure of high IQ people to reproduce adequately, (b) the high fertility rates of low IQ groups, and (c) the immigration of low IQ groups into the country in recent years. "About 57 percent of legal immigrants in the 1980s came from ethnic groups that have scores significantly below the white average, and in consequence the IQ mean for all immigrants is likely to be below 100," they write. The dysgenic trend, not an oligarchy of the smart, is the real danger that the book's conclusions yield.

The political and policy prescriptions that Herrnstein and Murray recommend are ambiguous. Though they claim an allegiance to the Jeffersonian and Federalist principles of the Framers, a number of their concrete recommendations advance in somewhat revised forms the egalitarian and statist policies of this century. Thus, while they advocate the "ending of affirmative action as currently practiced," the suggestion is not quite as radical as they seem to think. They actually endorse "returning to the original conception of affirmative action," which they see as ensuring that as many qualified racial minorities as possible are recruited to universities and high-skill jobs. In general, Herrnstein and Murray are willing to accept without much question a good many egalitarian, redistributionist, and statist preconceptions, and it is impossible to read this book without recalling once more James Burnham's insight about neoconservatives—that though they may have broken with much of the formal doctrine of the left, they still retain the "gestalt of liberalism" and have not yet purged themselves of its moral and psychic reflexes. Nevertheless, Herrnstein and Murray do make a powerful general case against egalitarianism and for a considerably reduced level of government interference in market and social relationships, even if several of their specific policy proposals seem to contradict their general principles.

The Bell Curve is an important book, but its importance accrues mainly from the controversy it has generated and

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the taboos it has shattered, not from its intrinsic merits. The authors' curious unwillingness to go beyond what their number-crunching substantiates on some subjects, coupled with their speculative leaps about the future shape of American society, their compulsion to qualify every generalization, their equivocations about race, their timidity at the prospect of being accused of any sort of antiliberalism, and their persistent allegiance to essentially egalitarian values and the political structures based on them, makes their long-awaited work more of a disappointment than it needed to be.

The same cannot be said of Professor Rushton's *Race, Evolution, and Behavior*. A well-respected psychologist at the University of Western Ontario, Rushton has been vilified repeatedly in the Canadian press, hounded by left-wing mobs, denounced by government ministers, and threatened with the loss of his job and even with prosecution under Canada's notorious Race Relations law, all because he has publicly discussed the existence of racial differences. Given that background, one might approach his new book with a suspicion that it is an inflammatory political tract, but such is not the case. Instead, it is a far more sober and serious work of scholarship than that of Herrnstein and Murray, though in some parts more technical in exposition.

Rushton is less concerned to prove the existence of genetic differentiations among the human races than he is to explain in evolutionary terms why the differences exist at all. Hence, he begins with an exhaustive account of those differences as well as of the genetic bases of a number of different kinds of human behavior. Drawing on his own research as well as on the pioneering study of separately raised identical twins conducted by Thomas Bouchard of the University of Minnesota, he documents significant hereditary correlations for such behavioral traits as altruism and aggression, activity level, criminality, dominance, emotionality, sexuality, psychopathology, and even attitudes (including political and religious beliefs), as well as intelligence. These correlations are independent of racial identity. He also surveys racial differences, physical as well as mental and behavioral, including brain and cranial sizes, testosterone levels, and genital forms. The evidence for mental differences between the races is no longer merely psychological but now includes Arthur Jensen's studies of reaction times, which imply a neurological basis for intelligence, and of magnetic resonance imaging of the brain, which gives a far more accurate estimate of brain size than the older external measurements of the skull. Rushton, following the research of other scientists, finds a consistent pattern of racial differentiation, with whites ranking intermediate to Orientals and blacks on such traits as "industriousness, activity, sociability, rule following, strength of the sex drive, genital size, intelligence, and brain size." He also cites evidence, less conclusive but "surely worthy of study," of racial differentiation in rhythm, body odor, depth of voice, bone density, and muscular and biochemical physiology that may help account for black athletic superiority in certain sports involving running and jumping.

In his evolutionary explanation of these differences, Rushton relies on Edward O. Wilson's sociobiological work, adapting Wilson's distinction between "K-selection" species, the genetic traits of which are selected for survival in stable environments in which heavy competition can be expected, and "*r*-selection" species, the traits of which are selected for unstable environments in which competition is not heavy. The behavioral differences between K-selection and r-selection species are mainly that the former, at least among mammals, tend to have larger brains, longer lives, and fewer offspring, for which they care intensively, while r-selected species tend to have smaller brains, shorter lives, higher fecundity, and to care less for their young. Although Wilson developed the concepts of K-selection and r-selection with regard to different species, Rushton argues that they may also apply to subspecies and that Orientals tend to be the most K-selecting of the human subspecies, whites to be intermediate K-selectors, and blacks to be the least K-selective. The physical, mental, and behavioral attributes of the three races as Rushton and others have described them would seem to fit this arrangement of their tendencies toward or away from K-selection.

Unlike Herrnstein and Murray, Rushton is not in the least equivocal about the reality of race. "The view that race is only a social construct is contradicted by biological evidence. Along with blood protein and DNA data . . . forensic scientists are able to classify skulls by race," and in this he follows the common sense of scientific biology. "Race" is merely a term applied to human subspecies, and the concept of subspecies in biology and taxonomy is no more controversial than among laymen who readily distinguish between collies and German shepherds, Siamese and Persians. Dog and cat races, of course, are artificially created by breeders, but races/subspecies exist in nature as well. J.R. Baker in his classic study *Race* (Oxford, 1974) discussed for several pages the "racial differences" that all biologists acknowledge to exist among the different subspecies of the European crested newt (*Triturus cristatus*). Only when such distinctions are applied to human populations do biologists buckle; and, as became obvious in the reception given to Herrnstein, Murray, and Rushton, their buckling is driven mainly by a self-serving ideology of egalitarianism and environmentalism, not by science.

Rushton follows the theory put forward by Richard Lynn and others that racial differences between human subspecies evolved during the Ice Ages, when the ancestors of the white race in prehistoric Europe found themselves confronted with a hostile environment that never existed in sub-Saharan Africa. "Thus, the cognitive demands of manufacturing sophisticated tools and making fires, clothing, and shelters (as well as regulating the storage of food . . .) would have selected for higher average intelligence levels than in the less cognitively demanding environment in sub-Saharan Africa. Those individuals who could not solve these problems of survival would have died out, leaving those with alleles for higher intelligence as the survivors." Orientals faced somewhat different survival problems in northern Asia, where extreme cold favored selection for the Asian superiority to whites in visuospatial skills but not for verbal skills, for which Asians test somewhat lower than whites. Already in prehistoric times, a "cognitive elite" had developed within the human species.

Unlike Herrnstein and Murray, Rushton has no political agenda, but he does conclude his book with a critique of egalitarianism that the vilification specialists who denounce him would be well advised to consider. Their universal refrain is that any attention to racial realities and differentiations will lead ineluctably to gas chambers and genocide. Rushton puts the shoe on the other foot. "Scien-

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tific theories," he writes, "do not cause people to commit murder. Nonetheless, all ideas can be used to justify hatred. But here, religious and egalitarian ideas have just as bad a history. The Reign of Terror following the French Revolution (1789) and the 70 years of communist dictatorship following the Russian Revolution (1917) show how readily idealism can be perverted. Thus, it is totalitarianism in the service of fanaticism that causes people to be murdered, not theories of human nature." For their part, Herrnstein and Murray express a similar idea near the end of their own book:

> The egalitarian ideal of contemporary political theory underestimates the importance of the differences that separate human beings. It fails to come to grips with human variation. It overestimates the ability of political interventions to shape human character and capacities. The systems of government that are necessary to carry out the egalitarian agenda ignore the forces that the Founders described in *The Federalist*, which lead inherently and inevitably to tyranny, throughout history and across cultures. These defects in the egalitarian tradition are reflected in political experience, where the failure of the communist bloc to construct happy societies is palpably apparent and the ultimate fate of even the more benign egalitarian model in Scandinavia is coming into question.

Egalitarians, in other words, hardly have a monopoly on virtue and are in a rather weak position to preach to their adversaries about the evils that follow from denying human and racial equality, let alone to demand that those adversaries be silenced by smears, intimidation and even legal prosecution. Had the egalitarians ever once shown a bit more humility about the murderous and repressive doctrine they and their ideological cousins have inflicted on all races for the last two centuries, then we might be more inclined to listen to the baying of their pack against the scientific critics of equality. Until they do, the rest of us should work to liberate our minds, our civilization, and our people from the destruction they have caused. Whatever their flaws, the works of Rushton, Herrnstein, and Murray are good places to begin. ◇

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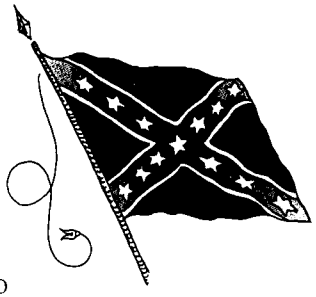

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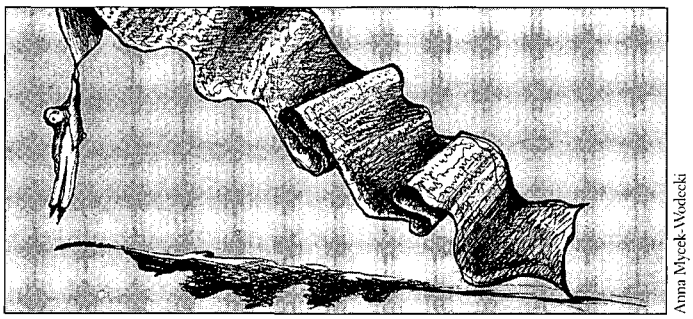
That Bestial Visor

by Frank Brownlow

"Every good poet includes a critic, but the reverse will not hold."
—William Shenstone



Anna Mycek-Wodecki

Philip Larkin: A Writer's Life
by Andrew Motion
New York: Farrar, Straus & Giroux;
570 pp., $35.00

Selected Letters of
Philip Larkin 1940-1985
Edited by Anthony Thwaite
New York: Farrar, Straus & Giroux;
791 pp., $40.00

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In the popular memory the interwar years in Western Europe were a period of instability, inertia, and poverty or, as Auden described the 1930's, "a low dishonest decade." One seldom hears about the interesting fact that during those interwar years, in England at least, there was a huge increase in the numbers of a new middle class of small business owners, local professional people, managers, and civil servants who lived in the thousands of new suburban houses being built around every town and suburban village. Although the more prosperous among them had a servant or two, or at least employed "help," and owned a car, most of them were not too different from the lower classes they came from. All of them tended to keep their children at school until they took their School Certificate at 16, or, in growing numbers, stayed on through the sixth form to prepare for university entrance.

Unlike the old middle class, these people had no connection with the landed gentry or the aristocracy, and no wish to ape their manners. They were a self-made people of peasant or proletarian background, confident, self-reliant, politically conservative, and for the most part innocent of what Matthew Arnold called "culture." They were often eccentric, even weird, in their tastes, as readers of the opening chapter of Kingsley Amis's *Memoirs* describing his own family will know.

As a class they were not popular with opinion-makers and trend-setters. To people of more developed tastes their peculiar accents, reactionary politics, charmless houses, and contented vulgarity had no redeeming social value. Unlike the working classes, whose inherited folkways had all the authenticity of the unavoidable, the new middle class had no excuse for its habits, which it willfully chose and persevered in despite means and education sufficient for better—a criticism repeatedly heard during the period. There was even a textbook, *Culture and Environment*, much used in English schools to wean middle class boys and girls away from their parents' tastes, and towards more wholesome models such as D.H. Lawrence and the Powys brothers.

Nonetheless, this is the class that produced the bright young men and women of the years after the Second World War in England, among them Philip Larkin and Kingsley Amis. Their cheeky rejection of upper-class approaches misled reviewers and critics into thinking they were a pair of working-class lads. Now, a generation later, with the publication of Amis's *Memoirs*, Larkin's *Selected Letters*, and now Motion's *Philip Larkin*, the truth is out: Larkin and Amis are almost perfect specimens of the new middle class as it was before the combined forces of postwar socialism and Americanism inducted it into the postmodernist new order. Their class provides the background of their work, and its plain, energetic, sometimes eruptively vulgar English is the language in which they write, as in Larkin's "Send No Money":

> Half life is over now,
> And I meet full face on dark
> mornings
> The bestial visor, bent in
> By the blows of what happened to
> happen.
> What does it prove? Sod all.

Larkin especially was a pure representative of his tribe, a specimen worthy of a bell jar, obstreperously Philistine (he once read a newspaper through a Mozart concert), insular, chauvinistic, Tory, and eccentric. His eccentricity was centered upon an emotional parsimony and defensiveness that led to a number of peculiar habits, among them hypochondria and a taste for girlie magazines. He must have realized quite early in life that he did not have vitality enough for both life and literature, and, being ambitious and competitive, for the most part spent his carefully husbanded intellectual and emotional energies on his poetry, and lived his life mostly in letters.

He maintained an enormous correspondence. Thwaite prints 707 letters, and Motion cites 787, of which only 196 are in Thwaite, making 1298 in all; but as Thwaite makes plain in his introduction, these are only a fragment of the total number. He often wrote to several people on the same day; in the deeps of his

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long-standing, complicated relationships with Maeve Brennan and Monica Jones he sometimes wrote each of them the same day, and often on successive days, playing them off against each other and keeping himself less than fully committed to either of them.

Obvious as it is that Thwaite's and Motion's fat but selective volumes must represent editorial and authorial perspectives rather than any kind of objective view of their subject, one fact emerges clearly from both: the much-loved poetic personality that people first encountered in Larkin's three small published volumes, *The Less Deceived*, *The Whitsun Weddings*, and *High Windows*, was as much the result of disciplined selection as the poems themselves. That sad, clearheaded, reclusive librarian who shared lower middle-class tastes and speech-habits with the majority of his countrymen was the public, presentable Larkin. As Thwaite's edition of the *Collected Poems* suggests, and as the letters now reveal, the private, unselected Larkin was—as one might have expected—a more complex, far less assimilable creature.

The publication of these letters in England in 1992, with their revelation of Larkin's fears, prejudices, weaknesses, and tastes, some peculiar to him, others typical of his class and time, produced a campaign of denigration that did no credit to its authors and raised once again a question that has become perennial in these days of revelatory biography: why should we pry into a writer's private life? As Larkin himself wrote on reading lives of Auden and Day-Lewis, "[I] was rather depressed by the remorseless scrutiny of one's private affairs that seems to be the fate of the newly dead. Really, one should burn everything." Larkin sold his writings publicly; he kept his private life to himself and his friends. His critics, on the other hand, frothing at the mouth with righteousness, evidently believe that a man must be certified morally and politically correct before he may write a poem, let alone sell it.

Even readers better able than Larkin's English critics to distinguish between life and art, between private thoughts and public actions, will find that this intensely private collection of letters puts them in a difficult position. It reveals more than we have any business knowing about a number of private lives. It tells us that, young and old, Larkin was timid, foul-mouthed, obsessed with sexual fantasy, terrified of death, and capable of extraordinary mean-spiritedness—as when he wrote of one of his women friends, "Wish I had some of the money back I spent on her, *and the time*: especially *that*." But for readers able to absorb this kind of knowledge while resisting the temptation either to judge or patronize, there are compensations.

In these letters, self-caricaturing wit continually redeems misery; as Larkin wrote to one correspondent, "And then my sagging face, an egg sculpted in lard, with goggles on," and to another, "None of my clothes fit, either: when I sit down my tongue comes out." The literary judgments are sure and bracing, too. On Wilfred Gibson: "*never wrote a good poem in his life* . . . People like this make Rupert Brooke seem colossal." On Fussell's *The Great War and Modern Memory*: "an extremely confused book . . . morally as well as intellectually uncentered." And although the letters to male friends like Amis and Conquest are spoiled by hobbledehoy bravado, they can also be cruelly truthful. On old age, to Amis: "My mother, not content with being motionless, deaf and speechless, is now going blind. That's what you get for not dying, you see." On his own aging, also to Amis: "[I] feel my mind's NOT ON MY SIDE any more." The letters to women friends, however, are consistently the best, those to Judy Egerton the most candid and straightforward, and those to Patsy Strang, with whom he seems to have been most happily in love, the most touching as a record of human experience, as well as of promise and failure.

Philip Larkin: A Writer's Life, though largely based on Motion's own selection of letters, is best used as a guide to Thwaite's collection. As a book in its own right, it is too long for so uneventful a life, and it provides yet another example of a biographer out of sympathy with his subject, in this case probably scared stiff of being caught approving of a man who collected girlie magazines, adored Mrs. Thatcher, and did not like to see England being overrun by immigrants. Instead of approaching his subject as a historian and placing Larkin in his class and time, which might have produced a fascinating essay in cultural and literary history, Motion has taken the easier route of providing a simple chronological narrative of the life and judging his subject by the standards of the present moment. And although he is himself a poet, his comments on the poems are generally flatfooted, sometimes even plain wrong, as in the case of "The Whitsun Weddings": "But while he admires the trainload of just-married couples, he knows he cannot join them. Alone in his carriage, sealed behind his window, he is conscious of loss but appreciative of his singleness."

To begin with, the day of the poem was a hot one, and the train windows were down, which is why Larkin noticed the weddings in the first place. If he was conscious of loss, there is no mention of it in the poem, which is actually about the happy, rollicking, unselfconscious release of joy and energy in all those ordinary, common, or garden weddings on a hot day in England: "fathers had never known / Success so huge and wholly farcical." That is why so many people enjoy the poem so much. "I hope it conveys something of the impressiveness of the occasion; it really was an unforgettable experience," he wrote to Judy Egerton.

Informative, interesting, amusing, and moving as both books often are, one leaves them hoping that Larkin's poems will survive the revelations of his letters and the judgments of this biography. ©

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A Pig in a Poke

by Arnold Beichman

On the Make: The Rise of Bill Clinton
by Meredith L. Oakley
Washington, D.C.: Regnery; 592 pp., $24.95

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Never did I appreciate so much the genius of the Founding Fathers as after finishing this remarkable biography of President Clinton. The authors of the Constitution created a government which makes it impossible for the United States to be transformed into a continental Dogpatch some millions of square miles in extent, which is precisely what this country would be if President Clinton could run it as he did his Arkansas fiefdom—that small, dirt-poor Southern state—as governor for six terms.

Ms. Oakley, who as a Little Rock political journalist saw and talked with Clinton almost daily from 1979 on, has provided us with facts, figures, and inside stories about Clinton in Arkansas which add up to the single question: how did this super-conman become President of the United States? Had her book been published before the 1992 Democratic National Convention, it is doubtful that Clinton could have been nominated, let alone elected. Readers of Ms. Oakley's documented stories of Clinton's violations of law and decency while governor of Arkansas will also ask:

1) How did the national media, electronic and print, with the possible exception of the *New York Times* and the *Washington Times*, fail to examine Clinton's scandalous record as governor?

2) How was it that Clinton's opponents for the nomination—Tsongas, Brown, Kerrey, and others—never made documented, detailed charges regarding Clinton's outrageous gubernatorial record?

3) How could President Bush and the Republican campaign committees have ignored that same record?

I emphasize the responsibility of the media because it was they, Ms. Oakley says, who presented Clinton as "a fighter, survivor, a crusader . . . [not a] draft-dodger, womanizer, prevaricator and opportunist." She writes: "The complete portrait of Bill Clinton was never presented to the American public by the reporters who covered him." Even now the mainstream media, busy investigating Supreme Court Justice Clarence Thomas's putative penchant for *Playboy* and denouncing Newt Gingrich as an "authoritarian," continue to ignore Clinton's Arkansas past.

That past includes an unsuccessful attempt by Governor Clinton in 1987 to restrict freedom-of-information rights by attempting to seal all tax records maintained by the state. While income tax records had never been made public under Arkansas law, those of other taxes and fees were available to anyone who asked. When the cloture provision of the new tax bill was uncovered by the press, and media delegations protested the provision, Clinton (supposedly a believer in open government) seemed to agree, and said he would see to it that the offending item was removed from the tax bill. "Less than a week after these reassurances," according to Ms. Oakley, "Clinton's lobbyists turned out in full force to promote passage of the bill with the cloture provision intact."

This bill was no ordinary attack on freedom of information, since the cloture clause made it illegal for state tax officials to release any type of tax information to anyone, including members of the legislature. Worse, not only did it make it illegal for anyone, including legislators, to gain access to any type of tax information from state tax officials, but it provided that the mere *request* for tax information was punishable by a maximum $1000 fine and a year in jail. Failure by a state official to report such requests to the proper authorities was similarly punishable. You will ask why Clinton went to such an extreme to curtail freedom of information. Was there some overriding democratic principle at stake? It appears that Senator Knox Nelson, then the most powerful member of the Arkansas legislature, was causing Clinton's legislative program a lot of grief. It was Nelson who wanted the tax records suppressed. The reason?

By Arkansas law, oil companies kept three percent of motor tax revenues they collected as compensation for estimated losses due to fuel evaporation. Nelson, owner of an oil company which received thousands of dollars in such "shrinkage" allowances, claimed that if this information were made known, his competitors would be able to determine his profits and he would therefore be at a competitive disadvantage. Whether Clinton believed this nonsense or not, he again promised to resist the attempt to bar public access to information. Another assault on open government was the sealing of the records of the Arkansas Industrial Commission's expenditures: a closure, Ms. Oakley claims, that was intended to conceal the desire of a Japanese company to open an industrial plant in a predominantly white community.

Having promised his labor allies in the Arkansas AFL-CIO in 1976 that he would support their petition campaign to modify the right-to-work amendment in the state constitution, Governor Clinton later refused to sign that petition. Though the labor barons remained neutral, Clinton received the AFL-CIO's endorsement in every subsequent general election. As Ms. Oakley notes, "Throughout his career, there has seemed no transgression his public would not forgive, no lie they would not excuse, no broken promise they would not condone." While black voters supplied the winning edge in Clinton's gubernatorial races (particularly that of 1982), the black cochairman of an Arkansas Republican County Committee, deploring the fact that Arkansas lacked what he described as a comprehensive civil rights law, identified "the Democratic Party of Arkansas [as] the reason that we don't."

Other matters of interest include Governor Clinton's illegal political and personal expenditures, and the deletion by Webster Hubbell, self-confessed felon and onetime high official in President Clinton's Justice Department, of "the original conflict-of-interest clause [in the proposed Arkansas state ethics law]so

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that Hillary would not have to divulge the names and clients she represented before state agencies." There is, however, one name Ms. Oakley passes over lightly but that I predict will become better known in the months ahead: Dan Lasater. His involvements with the Clintons in the Arkansas years have yet to unfold. And when they do . . .

Arnold Beichman, a research fellow at the Hoover Institution, is a columnist for the Washington Times *and the author of* Anti-American Myths: Their Causes and Consequences.

All Post-Keynesians Now

by James J. Novak

John Maynard Keynes, Economist as Savior: 1920-1937
by Robert Skidelsky
New York: Penguin;
768 pp., $34.95

◆

For connoisseurs of biography, Robert Skidelsky's projected three-volume work, *John Maynard Keynes*, will rank with the best of the genre. The first volume appeared over a decade ago under the subtitle *Hopes Betrayed*. The second volume, under review here, surpasses the first. The third is not yet finished.

Like its predecessor, volume two is a masterpiece of narrative, providing superb analysis of Keynes' life and times and economic theory. Readers will learn of Keynes' contribution to both the arts and the Bloomsbury Group. And while Skidelsky's prose style is lucid enough not to discourage nonspecialists, serious students of economics will find themselves riveted to his description of the theoretical aspects of one of the most fertile and turbulent eras in economic thought.

For many today, it is difficult to reconstruct the deep ideological struggle that erupted during the Great Depression, when the already high unemployment that haunted Europe in the difficult period of adjustment following World War I exploded into mass unemployment, and when international trade, the engine of growth and employment, broke down, separating nations into self-contained units. As radical predictions by national and international socialists seemed to have been realized, fascist and communist movements were catapulted to the cutting edge of history. Ordinary democracy and capitalism were not only in disrepute, but the theories of Burke and Adam Smith were treated as outdated window dressing for sinister interests. In this milieu, Keynes' work helped bring back sanity by grasping the immediate issues and trying to turn the tide.

Before touching briefly on Keynes' economic contribution, I must point out that Skidelsky has unearthed information regarding Keynes' life and beliefs that is sure to surprise even those already knowledgeable about the man. For example, I was surprised to learn that the great economist read and respected Edmund Burke, and that he not only was impressed with T.S. Eliot but was sympathetic to the poet's conversion to Christianity, a step Keynes refused to take. Similarly, so great was Keynes' reverence for the English way of life that he appreciated the dangers of communism when it penetrated the Apostles Society at Cambridge—the society that produced Philby, Blunt, Burgess, and Leo Long—to which Keynes belonged and for which he had great loyalty. Skidelsky tells us that Keynes, who had several homosexual liaisons, ended this part of his life when he married Lydia Lopokova, a Russian ballerina and actress, and that the economist was an inveterate and successful trader in stocks and bonds, both on his own behalf and on that of his Cambridge college. Thus, Skidelsky portrays a side of Keynes that, despite his often rakish ways, represents the best of English life.

As for Keynes, the economist, he not only exhibited his talents early on but took pains from the outset to be something of an iconoclast. This was no small matter, since he held positions in the Treasury during World War I and later at Versailles, positions which gave him invaluable insights into the inner workings of policymaking. An able polemicist and publicist, he was also capable of describing complex issues with great ease and forcefulness, as in his *Economic Consequences of the Peace*, a tour de force of iconoclasm, astute analysis, and polemical thrust. Political elites distrusted him for that iconoclasm, literary circles for his stinging prose, and economists for being what we now would call a cranky policy wonk. Fortunately for Keynes, he was right enough of the time never to lose his credibility. In 1926, he opposed a return to the Gold Standard, which was too high to be maintained. It collapsed in 1931.

His best work, *Treatise on Money*, failed to change the world, a feat that was accomplished by his second book, the *General Theory of Employment, Interest, and Money*, which no one considers his best. And while, as Skidelsky points out, almost none of the *General Theory*'s concepts is applied by economists today, historians of international trade theory can look back at the *Treatise on Money* as a milestone along the road to floating exchange rates. Indeed, Milton Friedman once told me that floating currency exchange rates "solved the problem Keynes could not solve." Skidelsky explains why Keynes could not devise a system of employment generation: he could not foresee floating rates which allow governments to choose between keeping a present rate or inflating the currency and accepting lower exchange rates (a choice made more or less consciously by the Reagan administration, which allowed the dollar to float downward during the 1980's as it inflated the currency). For in Keynes' time, fixed currency exchange rates were essential—as they were until late in the Nixon-Ford years and again during the Reagan era.

But it was the *General Theory* that shook the world in its day and for which Keynes is famous. The book's most enduring contribution, Skidelsky writes, was the shift in focus from the economics of the firm, now called "microeconomics," to an analysis of the national economy as a whole, or "macroeconomics." It was this macro look at the national economy that most people under age 70 but over 40 had to study in the multitudinous versions of Paul Samuel's textbook, that dominated discussions in the 1950's and 1960's and that informed the econometricians and whiz kids of the President's Council of Economic Advisers. So entrenched were economic models based on this view that in the halcyon days of the "end of ideology" in the 1960's a great economist wrote that there was not much more to learn in economics except how to manipulate the various numbers in the models. That Keynesian doctrine held America enthralled until the late 1970's, lasted well into the 80's in Thatcher's

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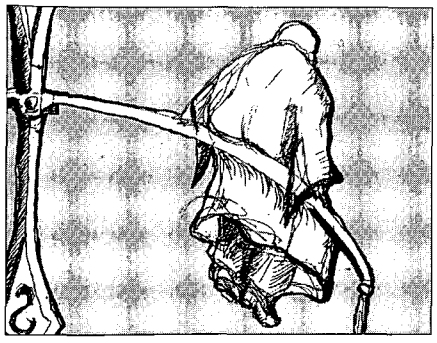
Britain, and still survives in Japan. Indeed, until the latter part of the 60's, many mainstream economists considered Milton Friedman a right-wing nut rather than a serious economic theorist.

Except for his macroeconomic views, most of the Keynesian construct has disappeared. Today exports, not government expenditures, are seen as the engine of growth and expansion of demand. The export multiplier of Keynes' opponent, Fritz Machlup, has outlasted the Keynesian public works multiplier. Similarly, clarifications of interest rate theory and more sophisticated analysis of technological change have replaced, respectively, Keynes' theory of liquidity preference and marginal propensity to invest. More importantly, many of the classical theories of the quantity of money and international trade have been restored to their place in the economic curriculum. Thus, what became known as Keynesianism wilted, as the world economy became more integrated and trade recovered from the state trading systems of the 1930's. What many economists now see—indeed, what some of them saw from the outset—is that Keynes' "general" theory was really a "partial" theory of certain conditions in international trade: the conditions of economic nationalism of the post-World War I and Depression eras.

This eclipse of many of Keynes' ideas does not mean that continuing study of his thought is futile, especially for the United States. For just as Britain in the 20's and 30's found itself burdened with war debts and a currency that had ceased to be the staple of international trade, so, too, the United States no longer dominates the world economy. Since President Nixon declared in 1972 that "We are all Keynesians now," the dollar has lost more than 50 percent of its value compared to other currencies, and the national debt and regular deficits are now enormous burdens on our national budget.



Moreover, economic nationalism is not dead. We know that Japan deliberately protects its markets, both directly and indirectly, and that a dollar devaluation of 60 percent against the Japanese yen is but another name for a 60 percent tariff, because it raises the prices in dollar terms of Japanese goods and lowers the prices in yen terms of American goods. The truth is that the world is on the verge of a change similar to the one that occurred before World War I, when the British pound sterling began to waver as the unit of international trade and British dominance no longer was guaranteed. Then Germany challenged Britain and knocked sterling from its place, which it never recovered. Today, the dollar wobbles with no clear challenger established. But, as a World Bank executive recently told me after Secretary of State Christopher's disastrous trip to Beijing and after President Clinton failed in the GATT talks with France and in forcing Japan to open its markets to American goods, "There is no question that the United States today talks big, but no longer carries a big stick." Were Keynes alive, he would understand our predicament, as Britain after World War I faced similar conditions.

There are many today who are ardent free-traders. I am among them. However, not a few of us are aware that hope of expanding world trade requires hegemony, and a single guarantor of both peace and debt collection. At least, these have been necessary in the past. Many of us have read the jeremiads against free trade by that old imperialist Leo Amery in his unappetizingly titled book *The Washington Loan Agreements of 1946*. In short, the specter of nationalism—that for Keynes was reality—still haunts the world, and the United States as a nation would do well to contemplate Britain's plight in the 1930's, if for no other reason than that "it could happen here."

One hopes that those libertarian and "one worlder" advocates of a free trade managed by international institutions are not entrusted with assuring the welfare of the United States in the years to come. One also hopes that there is a Keynes around who understands the difference between what is good for the New World Order and what is good for America. What is good for both is often congruent, but just as often at loggerheads. It takes a steady gaze to walk the thin line between them. Without that steadiness, fears about our position in the world will be realized and American interests and institutions could come under siege even more than they are today. Keynes with his superb intellect comprehended the relationship between policy and theory, economics and national sovereignty. Britain today may not be the richest country in the world, but its institutions endure, thank God. And Keynes deserves some credit for this result.

James J. Novak is the author of Bangladesh: Reflections on the Water *(Indiana University Press).*

Of Time and the River

by Collie Owens

A History of the River
by James Applewhite
Baton Rouge: Louisiana State University Press;
49 pp., $15.95

The Horse Show at Midnight and An Afternoon of Pocket Billiards
by Henry Taylor
Baton Rouge: Louisiana State University Press;
137 pp., $19.95

The Last Century
by Laurance Weider
Sydney, Australia: Picador Press;
140 pp., $12.95

◆

It is fitting that two of these outstanding volumes of poetry (Taylor's and Weider's) gather work from over 20 years of the poets' respective careers; fitting because all three collections exhibit a concern for the passage of time, both its destructive power and its capacity to inspire wisdom and love. In contrast to poets who pour forth prose masquerading as verse—work so solipsistic as to be virtually meaningless—and poems hobbled to a political (predominately leftist) agenda, these three poets whose concern is to capture the human condition in words and forms of lasting beauty have produced some of the best that contemporary poetry has to offer.

James Applewhite's new collection re-

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flects his home state of North Carolina and is laced with stories of local inhabitants past and present, their trials and joys. A sense of history informs many of these pieces, such as "Among Names of My Fathers," in which Applewhite meditates in the family burial ground on the vicissitudes of time; however, it is a history that seems remote. A "dark identity" connects the poet with his ancestors, men whose lives seem "fabulous" to him. Yet even as he disapproves of certain aspects of their lives (e.g., their owning slaves), he also sees himself as one with them, both in his genetic heritage and in his common mortality. "Making Tobacco Money" looks at the past and celebrates the hard labor of farmers who cultivated the land and made it productive, a time when "folks identified themselves not by wealth on paper but / by visible achievements of their hands." The same backward glance to an earlier era marks "The Cemetery Next to Contentnea"; here Applewhite ponders the hardiness of farm families, their realism, and their perseverance. Other poems focus on the conditions of contemporary farmers who, like their forebears, are swept along in the river of time and change. For instance, the persona in "A Wilson County Farmer" muses on the difficulty of finding field hands, on declining tobacco prices, and on his own lonely existence. A similar situation is reprised in "Accident of Inheritance," in which a son who has inherited his father's farm wonders if rural life is worth the struggle.

The poignancy of change is touchingly rendered in poems such as "The Rest Home," in which, after witnessing the pitiable condition of the institutionalized elderly, the narrator comments, "It's a shame / We say, feeling ourselves creatures / Together in this small world of time." Life's ineluctable progression toward death makes us feel our vulnerability. Several poems sound this same note.

But temporality and mortality do not have the final say. The last poem in the collection, "Light's Praise," is a paean and prayer to the glory of sunlight: "Light, existent from the start, not to be / extinguished by my or anyone's exit, circle / on yourself oh self-subsistent seeing. . . ." The hegemony of time is challenged as well by human love and togetherness, as in "The Ridge on the Edge of the Day." The poet watches the sunset and feels the passage of time but comes to this conclusion: "Tonight I am content to be a creature lent / this riding with the movement of the planet since / across the noise of water is my wife, whose / kiss will ease the mystery as we face the night together." Love does not conquer time, but it does make it bearable.

Henry Taylor's book consists of two previously published collections, *The Horse Show at Midnight* (1966) and *An Afternoon of Pocket Billiards* (1975), the former showing the promise of a young poet, the latter the power of a more mature one. Traditional forms and meters abound in both collections and are executed with skill and flair, though some of the pieces in the earlier volume are a bit too whimsical for my taste.

The insistent theme of time and history is present in many of these poems. In "Harvest," for instance, the poet describes a return to his deserted home:

> Every year in late July I come back
> to where I was raised,
> to mosey and browse through old
> farm buildings,
> over fields that seem never to
> change,
>
> rummaging through a life I can no
> longer lead
> and still cannot leave behind, looking for relics
> which might spring back to that
> life at my touch.

One *can* go home again, if only in memory. Still, in spite of mental homecomings, "time marches / in a double column, double time," and loss is one of the few certainties in our frangible lives. From the death of a boy's pet toad to the burning of a dead horse to the aging folks at church, "the old / insistent rituals of decay unfold."

However, like Applewhite, Taylor finds cause for celebration and joy, as in "Canticle of Created Things" (from a prayer of Saint Francis of Assisi) and "Buildings and Grounds," with its lesson of the need to cultivate the place that has been given us: "I will still make something / to sustain me here in this alien land." Applewhite suggests that various strategies—prayer, love, work—can help us endure and prevail.

Laurance Weider inhabits a cityscape remote from the world of Applewhite and Taylor. Weider portrays eccentric characters whom one often associates with large urban areas; his world includes, among others, a foot fetishist and a waitress whose bedside weapon is a hammer. Some of his characters, however, are more disturbingly familiar in their middle-class attitudes, like the husband and wife in "Gertrude and Samuel," Hungarian immigrants whose obsessions with material goods and social status are satirized (but in a way that leaves their humanity intact).

What Weider has in common with Applewhite and Taylor is his focus on temporal process—"the yellow bone of time," as he refers to it in one poem—that subverts both physical continuity and epistemological certainty. Loss and mutability are the subjects of several poems, whether these concern lovers who separate or parents who must negotiate middle age and modify their ideals. In spite of pain and ruin, however, one must still choose life: "Though I knew / there was no love / without parting, I chose you." Our saying yes to life allows us the possibility of finding "the higher / Joys, which live quietly, in gratitude." Time not only kills but gives us the chance to sing our songs of belonging. The poet effectively makes this point in "Water Is the Mother of Ice":

> I keep the dull and weekly hours,
>
> Record the natural equations, and
> decorate
> The earth with songs to draw the
> strings
>
> Of my relations, which tie me to
> other men,
> To the earth, my own body, and
> the stars.

Though he faces realistically mankind's foibles and the pathos of our mortal condition, Weider joins Applewhite and Taylor in celebrating our "relations" that transcend time.

These three poets thus share a sense of the contingent nature of human existence which is counterbalanced by an appreciation of life's richness. One comes from reading these volumes with a heightened awareness of our common limitations and possibilities, and the welcome recognition that good poetry can still be found even in the cultural wasteland of postmodern America.

Collie Owens is an assistant professor of English at DeKalb College in Atlanta and poetry editor of the Chattahoochee Review.

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Letter From Miami

by Alan R. Turin

Judicial Tyranny and Minority Rights

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In 1959, Frank Sinatra starred in immigrant filmmaker Frank Capra's last movie, *Hole in the Head*. Featuring the Academy Award-winning song "High Hopes," it was about a widower father (Sinatra) struggling with a mortgaged hotel on Miami Beach. Miami was a year-round, warm and sunny resort for Northeasterners. Culturally, it was a suburb of New York or Philadelphia. Everything in Miami revolved around the tourist season. Miami—the Winter Borscht Belt.

Ten years later, Alan Arkin starred in *Poppi*, another period piece. Arkin is a widower with two sons. They are Puerto Ricans living in a ratty neighborhood in New York City. Arkin sees the benefits Cuban refugees get and plots to float his boys in a boat so the Coast Guard will pick them up as Cubans. The boys will then enjoy the good life.

Arkin goes into a downtown Miami tavern at night, walks along the pier, has slapstick escapades in a hospital. The bartenders, boatmen, nurses, hospital orderlies, doctors *all speak English*! When the sons need to speak to the doctors, or government officials, or anybody at the hospital, an interpreter must be summoned. The boys can speak English, but to get benefits they must fake being Cubans by speaking only Spanish. The hospital has no one, save the interpreter, who speaks Spanish. In 1969, English was the language of most Miamians.

The capstone was the 1993 film *Home Alone 2: Lost in New York*. Macaulay Culkin gets separated from his dad at Chicago's O'Hare Airport. The family goes to Miami, to the same resort hotel where his uncle and aunt had their honeymoon 20 years ago. The hotel is decrepit. Lights are burned out. The weather is awful. As the family tracks down the missing Culkin, the children watch Capra's *It's a Wonderful Life*—in *Spanish*—on the hotel TV. From Capra's *Hole in the Head* through *Poppi* to the *Home Alone 2* cameo of Capra's *It's a Wonderful Life* in Spanish. A film triptych of Miami.

Related to this is the electoral transformation that has occurred in Miami. In 1993, thanks to a federal judge's reading of the federal Voting Rights Act (VRA), the office of mayor ceased to exist in Dade County. Countywide commissioners were also axed. The VRA requires that electoral districts be drawn where minorities are in the majority. The question for the judge was whether countywide elections unfairly diluted minorities' votes.

In Miami, Cubans are the majority (53 percent). Hispanics nationally are a minority. For purposes of electoral counting, Hispanic means born outside the United States in a Spanish-speaking country. If both of your parents are from Cuba, but you were born here, you're a gringo. Here "non-Hispanic whites" is the euphemism for white Americans.

In 1992, Dade citizens voted on single-member districts and a pay raise from $5,000 to $50,000 for county commissioners. The voters rejected the measure, but the judge ignored the vote, dissolved all countywide voting for the county commission, including the Office of Mayor, and ordered special elections.

The first act of the new order was to raise gasoline taxes and abolish the voter-approved English-only ordinance. The ordinance, passed "in fear" in 1980 by voter referendum, required that no taxpayer funds be used for promulgating county government information in any language but English. A compromise was struck for information on emergencies.

The new Establishment explained that the ordinance was passed *back then* because of fear and ethnic animosity. The Mariel boatlift began April 1980. In just three months, 114,000 Cuban refugees arrived in Miami. Castro used the boatlift for the social engineering of both Cuba and Miami, emptying his prisons not of political prisoners but of criminals and mental patients. Most Marielitos were neither criminals nor insane, just poor Cubans who saw a fast way out of the "workers' paradise" into the land of the big PX. But if only one out of ten was a bad apple, that gave Miami, in 90 days, 11,400 new bad apples with which to cope.

Today there is no longer any ethnic or racial animosity or fear in Miami. Jorge Mas Canosa, of the Cuban-American National Foundation, was interviewed by a Spanish magazine. Question: After Fidel falls, won't Americans take back Cuba? Mas Canosa's reply: "Bulls--t! The Americans can't take back Miami!" Mas Canosa says he was quoted out of context.

Northeast Dade condominium voters, largely Jewish retirees who vote a straight Democratic ticket, have been marginalized overnight. The "condo vote," once a major force, is finished. In the spring of 1993, the county commission included one black and two Hispanics. Six months later, there are two "non-Hispanic whites" out of 13 commissioners. "Non-Hispanic white" enclaves in unincorporated Dade are planning to incorporate into cities. No, there is no ethnic or racial animosity animating politics in Dade anymore.

Suit was filed against the school board for single-member districts. The only dispute is about when the single-member districts will be implemented. Of the students in Dade public schools, 54 percent Hispanic, 30 percent black, and 16 percent non-Hispanic white. Miami's white population, both American and Hispanic, is leaving for neighboring Broward County as many homeowners did upon receiving their insurance checks after Hurricane Andrew. Hispanics who want to be American get out of Dade, while Hispanics who like living in a Spanish-speaking enclave stay put. It is a self-selecting process that widens the gulf between Miami and the rest of Florida.

In the 1980's, a popular bumper sticker in Miami read, "Will the last American leaving Miami please take down the flag." The counter sticker was, "The flag is staying and we're not leaving." Those stickers are gone. The folks on both sides of the issue have left. Miami's most popular bumper sticker today is *Hermanos la rescate* ("Brothers to the Rescue"), which is the name of a group of Cuban pilots who fly the Florida straits looking for rafters from Cuba.

Late last summer, a "slow motion Mariel" began. This created a wave of "nonfear and nonanimosity" in Miami. With the Haitian refugee influx, Mi-

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amians are now in a virtual reality of nonfear and nonanimosity, and Clinton's firm hand-on-the-tiller foreign policy toward Cuba and Haiti merely worsened ethnic and racial hatreds. Many South Floridians favored intervention in Haiti just to end Haitian migration. Broward County today resembles pre-1989 West Berlin: conscious of its differences and desiring to maintain them. The "non-Hispanic white" enclaves of Dade are determined to become separate cities.

The Ku Klux Klan has won in Miami. Imagine that you hate foreigners but are far removed from the levers of power. You cannot stop the waves of immigrants from Third World countries. What is to be done? Keep the immigrants from leaving Dade! How? Encourage multiculturalism. With local government trilingual, one incentive to master English is gone. How can José leave his Spanish or Creole enclave until and unless he speaks English?

In Florida, Miami is loathed. Nobody wants his town to resemble Dade in any way, shape, or form. In Dade, political and cultural liberalism are in the service of the Klan.

Alan R. Turin practices law in Miami, lives in Broward County, and dreams of North Florida.

Letter From Inner Israel

by Jacob Neusner

Sorting Out Jew-Haters

◆

"The Jews" stand in people's minds for so many things that you can find their despisers in places where there are not many Jews around to hate—or even enough to attract much attention to begin with. Take, for example, that outlying fringe of the settled world, New Zealand, where I spent last summer (winter in the Southern Hemisphere).

The closest spot on earth to the Antarctic, the South Island suffers a harsh winter, with cold gales sweeping up from the south; its population, gathered in just a few towns and cities on the East Coast, enjoys not only nature's grandeur—the magnificent Southern Alps, the rain forests on the West Coast and the Tasman Sea—but also nature's earthquakes on a very regular basis. The people breathe air as polluted as Denver's and, looking longingly to the warm sun to the north, endure a winter gloom that compares with Labrador's.

It was here—among a people with impeccable manners as well as a cold intolerance of difference, who are patronizing to the Maori, scarcely pretending to tolerate Chinese and Indians and Jews (American accents don't fare all that well either)—that I encountered incidents that some may class as anti-Semitic, and encountered them often (three times in one month), personally, and directly. What I heard were, if not anti-Semitic, then at least gauche and stupid remarks about Jews and Judaism untempered by even a trace of embarrassment. This led me to reflect on the varieties of dislike of the unlike regarding Judaism. But, as always when it comes to the Jews, even Jew-hating gets complicated—because there are haters and then there are *haters*.

Since few Jews live in Christchurch—there is a synagogue with scarcely a hundred members, most of them secular and merely ethnic, many of them intermarried and unlikely to raise another Jewish generation—nothing prepared me for my first encounter. Now, the fact that I'm Jewish is something that most people take as an integral part of me, but like my nose or my left-handedness, not something requiring comment. The initial incident took place at the University of Canterbury, where I was a visiting professor for a couple of months (a wasted spell at a boring commuter college of no great distinction in most subjects). In the faculty lounge, I was introduced to a colleague from one of the language departments.

> "This is Jack Neusner, visiting from America."
> "Oh, you're the visiting *Jew* [emphasis his]!"
> "What?" I said.
> "Oh, I mean, the *wandering* Jew!"
> "Don't you know people don't talk to each other that way?" I replied.

I wish I had thought of something more devastating to say, but the experience of being told "Oh, you're the *Jew*" proved so alien that I had not the wit to respond in kind. "And *you're* the local Kiwi bigot, out of the museum of South Pacific curiosities?"

People later reassured me that the man is a Quaker and (therefore!) wouldn't hurt a flea, but is also the most gauche person they know. Anyhow, his comments weren't anti-Semitic, just dumb. I put it down to the isolation and provinciality of a professor in the outer

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reaches of civilization. It was an odd fellow, nothing more—until Dunedin, further still toward the polar ice cap, settled by the Scottish Presbyterians when the English Anglicans started Christchurch.

There, visiting friends at a dinner party, I was seated—as co-baby sitter, I found out, along with a young Canadian law professor from Otago University—next to a woman who clearly could not stop talking to save her life. She was a lawyer, paid to babble I reckon, the third generation in her family's law firm, Dunedin-born and -bred, speaking that nearly unintelligible patois that my Canterbury friend, who is an English professor, called "demotic Kiwi," meaning, English spoken with so bizarre an accent (for American ears at least) as to form a private, antipodean language—Presbyterian pidgin, really. Since on the other side of her sat a lawyer, she commenced to tell her "lawyer jokes," which rivaled in stupidity the old Polish jokes that mercifully have gone into oblivion.

Then, turning to me at her left, she announced, "Well, I have told my lawyer jokes. Now tell me your Jewish jokes," by which she clearly meant jokes at the expense of Jews. I said as coldly as I could, "I don't know any and have never heard any. People don't tell me that kind of joke." Without a pause, she turned to her right and asked the young law professor, "Well, you tell me *your* Jewish jokes." I had the sense that he would not have minded dropping dead on the spot, but between the two of us, we managed to steer her in the direction of a monologue on some—any—other subject.

This, too, I wrote off not as anti-Semitism but as just another example of how far we Americans have come in cleaning up our ethnic act. A woman such as this gives a bad name to feminism, which I favor, and a good name to political correctness, which I despise. But, no, it was not anti-Semitism.

My third encounter *was*. As a professor at Waikato University in Hamilton, on the North Island, explained to me, a student of his who, in the context of a class discussion about religion, identified her faith as Judaism had been told by another professor, *"No, Judaism is not a religion—it's just a certain attitude toward money."*

When I heard that icy judgment (I'd gotten hints of the same thing among students at Canterbury University), I began to reflect on the difficulty with distinguishing the varieties of ethnic and religious bigotry that encircle Jews and our religion: Jew-hatred, anti-Judaism, anti-Semitism, Jew-baiting, anti-Israelism, or anti-Zionism, and the various other species of the common genus. I did not fully trust the judgment of my native informant, who used the last tale as evidence that New Zealand is an anti-Semitic country with a fascist government, neither of which is true.

We lump all Jew-haters together and class them as guilty of "anti-Semitism." But this is misleading. It is like not knowing the difference between a headache and a brain tumor. Each should stand on its own terms. People label as anti-Semitism anything from the casual ("Jewish jokes") and merely stupid ("wandering Jew, I presume") to the vicious ("attitude toward money") and dangerous. This makes the trivial and the consequential into the same thing.

People may impute to Jews a set of qualities they do not like. That's Jew-hatred, common for example in America's black community, and to a lesser extent in the white community as well. Classify this as dislike of the unlike.

For nearly 20 centuries, faithful Christians have maintained that Judaism died at Calvary, meaning, Jesus Christ replaced Judaism and Christianity superseded it. This is anti-Judaism. Until Vatican II (for Catholicism) and its counterparts in Protestantism, that view prevailed universally. Classify this as the quite familiar theological warfare—all against all in God's name.

People say things they know will offend Jews, for example, ridiculing our supposed ethnic traits or our religious practices. That's Jew-baiting. Some think Patrick Buchanan has occasionally not just disagreed on matters of public policy concerning Israel but gone out of his way to bait Jews (Israel's "amen corner" in the United States Senate, for instance); others write off such comments as mere colorful language aimed at accomplishing a polemical goal. No one I know who knows him personally takes the former view. Classify this as verbal bullying.

People who hate Jews may condemn the state of Israel in terms they do not use for any other country and impose a standard that no country can reasonably hope to meet. This is a form of anti-Zionism or anti-Israelism, and it yields its own cruel vocabulary, comparing Israelis to Nazis, for instance. Classify this as politics poisoned by bigotry.

None of these trivialities changes the world very much. None qualifies as anti-Semitism, because, by themselves or all together, none can have led to the holocaust of World War II. Only anti-Semitism, which encompasses all of the above, so focused an entire civilization—Europe, East and West, North and South—that the holocaust happened. But anti-Semitism is not the same thing as casual bigotry, mere dislike of the unlike, let alone theological animus or a spiteful form of politics. Unlike the rest, anti-Semitism sets forth a worldview, a philosophy of life and culture and politics, like communism or socialism or fascism or democracy or Christianity.

According to anti-Semitism, Jews are a separate species within humanity, peculiarly wicked, responsible for the evil of the human condition. A political philosophy formulated in the world of late 19th-century Germany and Austria, anti-Semitism formed the ideological foundation of political parties and served as the basis for public policy. It provided an account of life and how the Jews corrupt it. It offered a history of Western civilization and how the Jews pervert it. It formulated a theory of the world's future and how the Jews propose to conquer it. People make sense of the world by appealing to anti-Semitism, and in World War II, millions of Germans willingly gave their lives for the realization of their country's belief in an anti-Semitic ideal of national life and culture.

An encompassing worldview, anti-Semitism stands by itself, not to be confused with expressions of intergroup hostility (such as Howard University's famous football chant, "Who killed Nat Turner? The Jews! the Jews! the Jews!"); interreligious conflict over religious truth (the centuries-long struggle between Judaism and Christianity, as in "his blood be upon our heads and our children's"); simple dislike of the unlike in the setting of civil conflict (the Senate's "amen corner"); and even impatience spilling over into unreasonable irritation with one foreign country or another. All these are irritating, but trivial. Confusing with them that wholly other philosophy, theology, and metaphysics that constitute anti-Semitism trivializes the latter and imparts importance to matters of little consequence.

When I was recently a visiting professor in Finland, some young men spent an estimated 15 hours of hard labor, using heavy construction equipment, to

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destroy the hundreds of headstones in the Jewish cemetery of Åbo/Turku. When they were caught, the local Swedish-language paper interviewed me on whether I thought that this act of Jew-hatred meant Finland was an anti-Semitic country. I said no, not at all; like Serbia, Finland could never be compared to Poland, Hungary, Russia, Austria, or Rumania, where vast segments of the population express to polling agencies a variety of hair-raising anti-Semitic (not just anti-Judaic, not just anti-Jewish) opinions; I doubted that anti-Semitism in any organized form exists in Finland, the way it does elsewhere. As allies of Germany from 1941 to 1944, Jewish Finns did fight side by side with SS troops against the Bolsheviks, but this hardly signifies an anti-Semitic country (though it makes one wonder about the Jewish Finns of that day).

In response to the interview, an easily provoked figure in the local Jewish community wrote an outraged letter to the same paper, accusing me of trying to "Bagatellize" (the Swedish word *bagatelisera* has no equivalent in English) the deep-rooted anti-Semitism expressed by the vandalism. I had, of course, done no such thing. But the fellow who wrote got to vent his anger and call his neighbors names. And that's what set me thinking about the need to sort things out and to find the right words for the right things. For surely when we invoke the memory of Auschwitz in the context of a debate about Israeli foreign policy, or compare the work of a few vandals to the activities of the SS, or convert an ephemeral disagreement about religious truth into a renewed conflict in which Christians like Martin Luther demonize the Jews and Judaism, we lose all perspective.

So, when visiting New Zealand the following year, I had to recognize the difference between a gauche Quaker professor or a provincial Dunedin lawyer, on the one side, and those dark and formidable forces active in many countries—and powerful in today's Russia and Austria and Croatia and in parts of the Muslim world even now—that could lead to the continuation of Hitler's plan. When sales of *The Protocols of the Elders of Zion* flourish in innumerable languages, from Russian and Arabic to Japanese, we had best know one Jew-hatred from another, take seriously what should be given weight, and set aside what is inconsequential.

Jacob Neusner is a Distinguished Research Professor of Religious Studies at the University of South Florida, Tampa.

Novus Ordo Seclorum

by Harold McCurdy

Six years went into shaping the Great Seal:
Franklin, Adams, Jefferson tried their hand,
Then two committees more; at length, the zeal
Of one Charles Thomson, under strict command,
Effected the design. Your dollar bill,
Green flag of luxury, bears on its back
(Lacking the splendid colors) both sides still:
The Eagle; and, all-seeing, the radioac-
Tive Eye of God. The Eagle is well known,
Proud head, spread wings, talons of war and peace,
The striped shield on its breast, the glory sown
With thirteen stars. Rare's the splendor who sees
That obverse's reverse: the Eye of God
Fixed in its mystic prism, its burning glass,
Atop the chopped-off pyramid. On the sod
A flourishing scroll affirms in permanent brass
The New Order, the New Deal, *NOVUS ORDO SECLORUM*, Roman numerals spelling out when.
The Eye approves, *ANNUIT COEPTIS*. So!
But where, O Lord? Where are the women and men?

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MEDIA

The Real Rush Limbaugh

by Cliff Kincaid

After I authored a *Washington Post* article critical of Rush Limbaugh from a conservative perspective, William Kristol of the Project on the Republican Future took me to task, telling a reporter that I had judged the popular talk show host by "extreme standards." Limbaugh, he said, is "plenty conservative for me."

Among other things, my article noted that Limbaugh, a staunch Reaganite, didn't vote for Reagan (he didn't register to vote until 1986, when he was 35); Limbaugh, a spokesman for family values, has been divorced twice; Limbaugh, who told a Christian magazine "Jesus is the answer," doesn't go to church and won't discuss biblical issues on his programs; Limbaugh, an advocate of a strong military and American interventionism, avoided the Vietnam War draft; Limbaugh has back-pedaled on social issues such as abortion and homosexual rights, though he emphasized them early in his career; Limbaugh refuses to correct his most serious errors, even though he describes himself as the "Epitome of Morality and Virtue"; and Limbaugh, an ardent Republican and multimillionaire, contributed a paltry $1000 to the Republican Party and its candidates during the 1992-94 election cycles.

Limbaugh says about President Clinton, "Character counts." Should Limbaugh's character count as well? Or should we simply set aside these obvious questions and contradictions, on the grounds that he is one of us, a "conservative," and that we have a vested interest in his success?

Conservatism is not just a set of beliefs, to be mouthed when profitable; it is (or should be) a way of life. It is important that our leaders—in Congress and out of government—be authentic, for otherwise we will feel the heat when they crash and burn. Human beings are imperfect. But without some connection between rhetoric and reality, American conservatives will inevitably follow their British counterparts, whose leading spokesmen for "back to basics" initiatives have been discovered fathering illegitimate kids and having homosexual affairs.

Some might argue that it is possible to be a conservative without living or acting like one. In this sense, conservatism has been a major factor in Limbaugh's success. As one conservative leader explained, "Limbaugh stepped into a vacuum where the American people wanted an alternative voice. He hit a nerve. But his success is not so much Limbaugh as it is the result of the desire for an alternative." For his part, Limbaugh denies being a "movement conservative."

At first, Limbaugh was funny and effective on a variety of social issues, such as homosexual rights and abortion. Now he rarely talks about them. Gone are the "AIDS Updates," poking fun at homosexual promiscuity, the renditions of "My Boy Lollypop" aimed at gay Congressman Barney Frank, and the "caller abortions" dramatizing the pro-life cause. But it gets worse. Not only has he given interviews to *Playboy* and *Penthouse*, he has appeared on a Hollywood sitcom (produced by friends of the Clintons, no less) and has even begun broadcasting ads touting the *New York Times*!

Conservative leaders, aware of his leftward drift, have generally been unwilling to challenge him. Some remain silent because they still hope for a complimentary word from Limbaugh on his radio or TV show, or because they want to get a favorable write-up in his newsletter, "The Limbaugh Letter." Others simply fear his wealth and power. The perception that he played a role in the Republican takeover of Congress adds to the feeling that he cannot be challenged. Yet Limbaugh has wandered so far afield on public policy issues that one wonders whether his activities will be harmful or helpful.

In response to my critique, Kristol said he was delighted with Limbaugh, describing his radio program as a kind of *Wall Street Journal* editorial page of the airwaves. Indeed, Limbaugh is known to be very close to the *Journal*'s John Fund, who largely wrote Limbaugh's first book. The *Journal* was quick to jump to Limbaugh's defense when liberals in Congress threatened to muzzle him by resurrecting the so-called fairness doctrine, and ran a column by William Bennett defending Limbaugh for a failure to correct inaccuracies. The *Journal*'s editorial page has also featured excellent coverage of the Whitewater scandal and congressional corruption, but it supported President Clinton's flawed NAFTA and GATT trade deals. It has been weak—and seems to be getting weaker—on cultural issues, to such an extent that advocates of traditional values have been forced to content themselves with an occasional op-ed piece. Even worse, the *Journal*'s editorial page went out of its way to attack Oliver North, who assembled an anti-Establishment coalition of Christian activists, working-class conservatives, independents, and disaffected voters in his ultimately unsuccessful Senate bid. North's platform included support for fair trade, as opposed to free trade, a crackdown on illegal immigration, and an effort to make English the official language.

Like the *Journal* editorial page, Limbaugh is very close to William Bennett and House Speaker Newt Gingrich. But Bennett, despite his contributions on cultural issues, namely his outspoken opposition to drug legalization, has backed away from hard-line stands on abortion and homosexuality. He now opposes a constitutional amendment protecting the unborn and complained publicly that conservatives have become "fixated" in their opposition to homosexuality.

Limbaugh confidante Gingrich was an author of the "Contract with America," a campaign document signed by hundreds of GOP House candidates which deliberately played down cultural issues. Columnist Robert Novak reported that Gingrich had left the issue of school prayer out of the contract because he did not want the *Wall Street Journal*'s liberal columnist, Al Hunt, to make fun of it. Hunt, for his part, tried to blackmail Gingrich, saying the congressman would "invite more inquiries into his own past" if he pursued an aggressive course. This signaled an effort by the liberal media to cripple the entire House Republican agenda by focusing on the personal backgrounds of Gingrich and other Republican leaders. Once again, conservatives were reminded of the ne-

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cessity of having leaders who are above reproach.

Limbaugh, too, has played down his stands on critical social issues in an effort to emphasize the "inclusive" bread-and-butter economic themes that some Republicans think are their key to electoral success. On one level, such as generating opposition to the Clinton health care scheme, this was somewhat effective. But it also resulted in a controversial alliance with the Clinton administration in seeking passage of NAFTA and GATT. Limbaugh joined Gingrich and Kristol in supporting these agreements, despite strong evidence that they will contribute to the erosion of American sovereignty and the country's manufacturing base, eliminating good, high-paying jobs.

Some contend that Limbaugh's shift on the issues stems from his celebrity status, from his having "gone Hollywood." Indeed, he took time off from his show during a critical debate over last year's crime bill to participate in the opening of a "Planet Hollywood" restaurant, where he posed for photographs with Roseanne Barr. It may be that rubbing elbows with the liberal elites at cocktail parties in Manhattan, where his broadcast originates, has affected him. It may also stem from the tendency of some conservatives to take their base for granted once they acquire power and influence. In any case, the change in Limbaugh's tone and demeanor is obvious over the air. *Newsweek*, in an article published just before last November's elections, noted that "intramural feuds" involving Republican New York City Mayor Rudolph Giuliani, Jack Kemp, and William Bennett had "left the GOP's chief spokesman—Rush Limbaugh—nearly speechless" on his show.

It is important to sort out these feuds and the role "GOP spokesman" Limbaugh played in them, because they shed light on whether the Republican Party will have a future that is in any sense conservative. Limbaugh endorsed Pat Buchanan early in the 1992 presidential campaign, only to embrace President Bush and denounce both Bill Clinton and Ross Perot later in the race. It is doubtful whether a candidate of Buchanan's views or stature would ever win Limbaugh's endorsement again in a presidential contest. Limbaugh drifted so far to the left last year that he became a cheerleader for New York City Mayor Rudolph Giuliani, whose conservative credentials were always questionable at best. Giuliani, after all, won the mayoral election and then proceeded to march in a "gay rights" parade and order his police to protect an illegal pro-pedophile demonstration. Yet Limbaugh praised Giuliani's performance during his first several months in office, mainly on economic and law enforcement grounds, and even touted a dinner party he had attended with him. Then, Giuliani endorsed the liberal ideologue and faux Catholic Mario Cuomo for governor, and Limbaugh, with egg all over his face, told his audience that the whole thing had to do with the fact that Giuliani had always wanted to be a Democrat—a fact that apparently had not been evident to Limbaugh before.

On immigration, Limbaugh was also caught flat-footed. He claimed that he understood why Californians planned to vote for Proposition 187, the initiative to terminate welfare benefits for illegal aliens, but expressed sympathy for Bennett and Kemp and their "vision" for the GOP when they came out against it. "Jack and Bill," he said, "are my friends, and I'm not going to condemn them." Kristol went even further, saying Kemp and Bennett showed "real political courage" in opposing a measure that won 59 percent of the vote.

Even more maddening was Limbaugh's cheerleading for GOP "moderates" before the elections, one of them being Mitt Romney in Massachusetts. At first, Romney's Mormon and business background convinced some conservatives to support him in his race against the decadent incumbent, Senator Ted Kennedy. But Romney's strategy was to run as liberal as Kennedy on the issues, in the hope that the race would be decided on character alone. The problem was that running as a liberal proved Romney had no character at all. Not content to promote gay rights and abortion, despite his own views on these subjects, he went so far, during one debate with Kennedy, as to *endorse* homosexuals in the Boy Scouts, on whose board he sat!

The case of multimillionaire "moderate Republican" Michael Huffington was even more pathetic. He was a backer of abortion, gay rights, gays in the military, and gun control, including the "assault weapons" ban sponsored by his "opponent," Senator Diane Feinstein. Nevertheless, some conservatives supported him, partly because his engaging wife, Arianna, had emerged as a conservative figure at National Review Institute conferences and had a television program on the conservative National Empowerment Television network.

The dirty little secret that Limbaugh has yet to confide to his audience is that "moderate" Republicanism is a cruel fraud. That was evident when "moderate" Republican Senator John Warner helped sabotage Oliver North's Senate bid by urging Republican Marshall Coleman to run as an independent, thus dividing the Republican vote and letting incumbent liberal Charles Robb squeak through. It is doubtful whether Warner will pay a price for his disloyalty to the party. Indeed, the GOP establishment will give him official support when he runs for reelection in 1996.

In Virginia, cultural conservatives and Christian activists will be reluctant to support Warner because of what he did to North. But the Christian Coalition has boasted about supporting other Republicans who disagree with them, even on critical issues such as abortion. These activists—the foot soldiers of the modern Republican Party—are supposed to be content with the thought that, in the distant future, the cultural breakdown will be reversed and it will become acceptable to be pro-life. In the meantime, they are supposed to keep quiet about federal tax dollars spent on fetal tissue transplantation and human embryo research. After all, unborn babies and human embryos—dead or alive—do not vote. But illegal aliens, on the other hand, are potential Republicans!

The conservative embrace of "moderate" Republicans has encouraged those plotting to eliminate the Republican Party's support for constitutional protections for the unborn by 1996. Yet the pro-life case can be made more effectively now than ever before. The scientific and medical evidence increasingly points to (1) the fetus being a human being and (2) the harmful effects of abortion, including its link to breast cancer. Limbaugh is in the perfect position to make this case. Unfortunately, he has already backed away from his pro-life position, that life begins at conception, by embracing the "states' rights" approach, which dictates life and death for the unborn on the basis of where they might live. Even this, however, might be too extreme for the GOP's "moderate" wing. Eventually, the same people pushing for the weakening of the GOP's pro-life stand will also be promoting a weakening of the party's opposition to "homosexual

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rights." Limbaugh, the "good Republican," will probably go along. After all, the argument will go, "gay conservatives" should not be drummed out of the party either. This means that Wisconsin Republican Congressman Steve Gunderson, once described by Representative Bob Dornan as having a "revolving door" in his closet because of his reluctance to admit he was a practicing homosexual, will be welcomed as a full-fledged member of the GOP.

Limbaugh's emergence as a "GOP spokesman" ultimately means that he has become a shill for a reincarnation of the old Rockefeller wing of the GOP, without Rockefeller. However, this stance puts him at odds with grassroots conservatives. He is taking heat for supporting NAFTA and GATT, for waffling on immigration, and increasingly takes shots at "moralists" in his audience. The problem, again, is that his writings on the subject seem to have no relationship to his own life. He has written, for instance, that marriage "socializes and normalizes" people and that the "magic of marriage" is beneficial. He has written critically of America's divorce rate, which has quadrupled, and claims that he "instinctively" understands the value of marriage in society. Yet he just married for the third time, and announced it to the world as proof of his family values.

But the most vulnerable aspect of Limbaugh may very well be his performance as a pseudointellectual, the "Doctor of Democracy" whose "Institute of Advanced Conservative Studies" gives phony educational degrees to those who buy them. His "Limbaugh Letter" went so far as to complain about a federal training program for a certain class of "underachievers," defined as "people who didn't go to college." Limbaugh, who briefly attended college when the draft was threatening him, denounced this as "subsidizing underachievement."

Since his personal life has been anything but exemplary, Limbaugh's claim to be an achiever must stem solely from the fact that he makes a lot of money, mainly by selling ads and trinkets, such as his "Limbaugh Commemorative Stein" for $79.95. Yet he makes the profiteering sound uplifting, boasting that "it is here in this land that the universal human yearning to improve one's lot is most blessed, and in the sweet air of freedom effort and achievement are most rewarded. This is America's greatest promise, and she fulfills it still."

In fact, the evidence shows that, for the first time in American history, the largest percentage of people who are emigrating from the United States are native-born Americans. Figures indicate that as many as 250,000 a year are leaving, largely because the economy is stagnant, crime is rampant, and America's heritage is under vicious assault. Yet Limbaugh, taking his cue from the *Journal*'s editorial page, continues to try to sell his audience on the notion that America is still number one because of its "competitive edge" over the rest of the world. On the contrary, statistics reveal that the United States ranks last among the seven leading industrialized countries in terms of long-term real growth in standard of living, and we have the lowest net national savings rate as a percentage of gross domestic product. Limbaugh even touts foreign investment in America, which has become a dangerous substitute for much-needed domestic savings and investment.

Ignoring the evidence of America's economic decline, Limbaugh carries on about the virtues of pocketbook conservatism. For a while, such talk can be exciting. I wrote several articles over the years touting Limbaugh's success and message. But it was my investigation of Limbaugh's own lucrative and increasingly tacky commercial activities that opened my eyes to his shortcomings, particularly his disservice to the cause many of us were involved in for years before he even registered to vote. In November 1993, after a caller to his radio program mentioned my name on the air, Limbaugh went into a tirade, accusing me of writing that he had refused to make free speeches for "the cause"—conservative groups. In fact, I had written in *Human Events* that he had waived his fees in *some* cases. In the course of making this charge, he launched a vicious personal attack on me, saying that I had "abandoned any pretense to accuracy" and was "incapable of the truth."

Limbaugh has adamantly refused to correct the record, either on me or on his "conservative" credentials, leading me to believe that initial suspicions about his commitment to "the cause" were well-grounded. In short, the cause appears to be himself, with conservatism as a means to an end. But if Limbaugh's desire is to go down in history as a Republican mouthpiece, rather than as a conservative, the least he could do is to send the GOP a significant cash contribution. Then we could safely assume he was finally putting his money where his mouth is, and that he has a financial stake in the outcome.

Cliff Kincaid was for several years a talk show host on the Newstalk Radio Network.

The Rise of Talk Radio

by Ron Smith

Until the rise of Rush Limbaugh, talk-show hosts and callers were pretty much ignored by the people who regard themselves as the guardians of Correct Thought. They seemed to regard talk shows as forums for the intellectually deprived, unworthy of attention from the ivory tower set. As we all know, this situation has changed markedly in recent years, and in fact people like Limbaugh, Gordon Liddy, and me are accused of all sorts of things these days. The President himself says it is awful that anybody be given several hours a day on the radio to say just what he thinks without contradiction. He was referring to ol' Rush, who has been a sharp thorn in Clinton's side for some time now. Of course, it is risky to attack the idol of millions of people, most of whom, one would assume, vote. Rush has a way of making his critics pay a price. After the *New York Times* columnist Anna Quindlen made an unflattering reference to him, Rush perused, parsed, and, yes, ridiculed every subsequent Quindlen column for quite a while. Since she is a solipsistic liberal of the Ellen Goodman school of personalized jabberings, her writings are quite easily ridiculed. So, I might add, are Mr. Clinton's foibles.

One of the things about talking on radio for a living is that you have to defend what you say every step of the way. Challenges to your conclusions are not filtered through the letters-to-the-editor department. This is the chief reason, in my opinion, why liberal talk-show hosts come across so badly when discussing political or social matters.

If Bill Clinton had a talk show, chances are his famed approach of seeming to agree with everyone he talks to

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would wear thin pretty quickly. When you run a talk show, you have to say what you *really* believe. There is no staffer to hand you an index card with the appropriate words on it. In my case, there is no staff at all. So if I cannot muster a goodly amount of evidence to support my points, I look foolish. As a talk-show host, you have to sustain your arguments spontaneously and be able to defend yourself against attacks from different directions. There is no time for rewrite. You have to have the *facts* right there at hand, muster your arguments, and be judged by the quantity and quality of the audience you are able to attract. This is why some hardheaded conservatives do so well in the job. They are sustained by having facts and history and *reality* on their side. Liberals have an empty quiver. Their arrows have all been fired and have missed their mark. Liberal nostrums have not worked. We live at the end of the Age of the Welfare State, which can no longer be afforded, and those of us who understand this reality are opposed to the statist insistence that this is not so. Here we are, debating national health care at the very same time that European states are facing the necessity of cutting back on welfare benefits, particularly the universal one: free health care.

Talk shows, along with the "religious right," stand accused by an assortment of left-leaning politicians and their servants in the press of fostering what the pundits like to call a "corrosive cynicism" among ordinary Americans toward their government. Seldom have so many editorials been generated as when the President complained about the criticism he received on a St. Louis radio station. The truth is, *we* are not generating dissatisfaction with government. What makes the people cynical is what the people with real authority are doing to this country, not what the critics are saying about it. What breeds greater cynicism, Bill Clinton's repudiation of numerous campaign promises or Rush Limbaugh's comments on these broken promises? Criticism of Whitewater chicanery or Henry Gonzales' stonewalling the House investigation of Whitewater? Moreover, the cynicism worsens when the Establishment media play political football with the facts, as when Washington journalists and Beltway talking heads made endless excuses for Dan Rostenkowski's actions. My own view is that the growth of cynicism can hardly keep pace with the lies and shenanigans deserving of cynicism. The right, both religious and secular, through talk radio and Pat Robertson's Christian Broadcasting Network, has found a way to circumvent the political and media elite, and the result is an Establishment on the run.

Anthropologist Jack Weatherford in *Savages and Civilization: Who Will Survive?* argues that the ten-thousand-year epoch of civilization that began with the development of agriculture and continued on through the rise of towns and cities is winding down. What Spengler in his opus saw as the twilight of *Western* civilization, Weatherford sees as the collapse of *global* civilization. It is this sense of decline and degeneration that talk radio today reflects and that the Establishment media deny and ignore. This head-in-the-sand approach will not change the course of onrushing reality. The people know that disunity is ascendant and that we desperately need leaders willing to tackle our country's serious social and cultural problems. It is this realization that accounts for the popularity of Rush Limbaugh and talk radio, the rise of the religious right, and the imminent demise of the secular left.

Ron Smith is a radio talk-show host in Baltimore.

LAW

Well-Regulated Militia

by Michael Hill

Last June, Sheriff Joe Arpaio of Maricopa County, Arizona, loosed a posse of some 700 well-armed and irate citizens to win back control of the streets and parking lots of Phoenix from the local goons. The sheriff's pronouncement, "We're going to get the bad guys," alarmed the local ACLU, which likened the militia to "a white citizens council, reinforcing white versus dark and well-off versus poor." But such are the left's reactions to healthy violence as the New Age millennium approaches. When private citizens are actually permitted to do something about their own safety—patrolling shopping mall parking lots or driving hookers, pimps, and dope dealers from street corners—the more sensitive, gentle souls among us issue forth with platitudes about race and class oppression. But such action is our only real hope of returning the streets and neighborhoods of urban (and if things get worse, rural) America to law-abiding citizens.

Our federal republic will not long survive national gun control legislation meant to disarm good citizens like Sheriff Arpaio's posse. Presently, such legislation threatens the original American federal system by preventing the states and their county subdivisions from defending themselves against the tyranny of street crime or of "consolidated" government. Under the Constitution, the states and the citizens thereof enjoy the collective right of self-defense; but during the 20th century, the Supreme Court has undermined that right by ignoring the Second Amendment. The Founding Fathers understood the likelihood of periodic friction between the interests of the states and of the national government and thus specifically recognized the states' right to arm their citizens. Madison and Jefferson, among others, warned that the people might find it necessary to resort to arms should the national government overstep its bounds, the salient question being: *Quis custodiet ipsos custodes?* (Who shall govern the governors?) Jefferson's answer was: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."

While Congress does have the authority to protect the states against foreign invasion and domestic insurrection and lawlessness by calling out the militia (Article I, section 8 and Article IV, section 4), it cannot command a state's armed citizenry to do harm to that state. Despite congressional authority to restrict under certain circumstances the states' rights to exercise discretion over military forces within their borders (e.g. Article I, section 10's prohibition against the states keeping ships and troops in peacetime without the consent of the national legislature), the states most assuredly retain the right of revolution. If states believe that they have suffered a "long train of abuses and usurpations" designed "to reduce them under absolute despotism,"

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they can, as a last resort, and without the consent of Congress, call forth the armed citizenry as a militia to defend life, liberty, and property.

Many Americans seem to have forgotten that they were given the right to keep and bear arms by the Second Amendment expressly for the purpose of defending themselves and their property from lawlessness and tyranny. Hunting and "sport shooting" are inconsequential compared to self-protection. Certainly Americans are threatened by street crime and random violence from below; but by far the greatest threat to life, liberty, and property comes from above—from a rapacious national government that increasingly strikes against the law-abiding while ignoring the real criminals (including many of its own employees). The Brady Law, the banning of some 180 assault weapons and high-capacity clips, threatens to impose excessive taxes on ammunition, and further attempts to abridge Second Amendment rights in the name of fighting crime or other social maladies should make us consider an important question: What is the source of the central government's "right" to designate what types of arms a law-abiding private citizen may "keep and bear"?

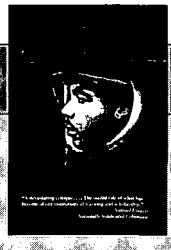
Since the end of Reconstruction, the federal courts have issued four major decisions involving the Second Amendment right to keep and bear arms. In *U.S.* v. *Cruickshank* (1876), the Supreme Court held that Congress had no power to regulate the states or the citizens thereof in regard to the possession and use of firearms. In *Presser* v. *Illinois* (1886), the Court ruled that a state cannot disarm its citizens to the point that they are unable to function as a militia under congressional order for purposes of national security. Thus, neither of these late 19th-century decisions enhanced state or federal authority to abrogate the Second Amendment rights of American citizens. Two rulings in the present century, however, *have* subverted the Second Amendment: *U.S.* v. *Miller* (1939) and *U.S.* v. *Warin* (1976). The Miller case, by upholding Big Daddy Roosevelt's National Firearms Act of 1934 (which placed certain weapons, especially rifles and shotguns with barrels shorter than 18 inches, under federal regulation), gave the central government power to decide what weapons are appropriate for state militias, and by implication, what weapons are illegal for citizens to own. The right to keep and bear arms had now been infringed by Congress. Building on precedent set by the Miller decision, the sixth circuit court ruled in the Warin case to uphold the Gun Control Act of 1968. That act, at least in the opinion of the ruling elites, destroyed once and for all the Second Amendment rights of individuals by making the possession and use of arms a collective right that applies only to members of "active" state militias. Moreover, the Warin decision acknowledged the power of Congress to regulate arms nationwide, the states' authority under the Tenth Amendment notwithstanding.

The present Congress points to such decisions to defend the Brady Law and Feinstein-Schumer assault weapons ban, but the federal courts are clearly wrong in their ruling on the Second Amendment. Congress still has no right under the Constitution to determine what arms the American people may keep and bear. Many liberals and mainstream conservatives argue that Congress must have control over gun ownership lest "gun nuts" of all stripes brandish machine guns, rocket launchers, mortars, grenades, and various sorts of even heavier hardware, making life unsafe for the poor thugs and deadbeats of Phoenix as well as Janet Reno's baby-burners. Perhaps some wild-eyed Branch Davidian types would manage to lay their hands on tactical or strategic nukes and unleash Armageddon on the Potomac. Ever mindful of such possibilities, our esteemed Solons must make the nation safe for democracy by declaring from on high what sorts of weapons we citizens may possess. But look for a moment at history and consider what would have been our fate had the British, in the name of public safety, succeeded in regulating American arms prior to Lexington and Concord. Had the patriots who stood their ground against General Thomas Gage's Redcoats been restricted to "keeping and bearing" blunderbusses as opposed to state-of-the-art "Brown Bess"-style muskets and Kentucky and Pennsylvania long rifles, then we might still be subjects of the Empire. The point is that if citizens have firepower comparable to their government's, then that government is less likely to turn tyrannical.

The development of sophisticated military technologies that are beyond the ability of the average American to purchase and maintain certainly has changed the firepower equation between the citizen and his government. Until World War I and the introduction of the airplane and tank, our forebears had little trouble acquiring and learning to use and maintain most of the advanced weapons systems of the day (perhaps excepting Dreadnought battleships). But the increased complexity and destructiveness of armaments and the subsequent monopolization of the means of violence by the state has put the citizen at a great disadvantage. Facing Leviathan against such odds is a daunting prospect.

So what is the answer? If Americans had guts, they would tell the courts to go to hell, take back their Second Amendment rights to arm themselves, and organize "well-regulated Militia" state by state. Liberals never tire of pointing out that the 20th-century equivalent to a militia is the National Guard (which of course can be federalized). This simply is not so; the traditional meaning of a militia is all males aged 16 to 60 acting in defense of their states and local communities against whatever threat may present itself. Since we are charged by the Constitution with defending ourselves in an organized, private fashion, then why cannot we (like the nation's armed services) obtain the most effective weapons for that vital task?

THE MARTIN LUTHER KING, JR., PLAGIARISM STORY
Edited by THEODORE PAPPAS



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Let us assume, for the moment, that we will not be facing the 82nd or 101st Airborne, but rather the BATF, DEA, FBI, and other guardians of the public weal. In case there are more Wacos, should we not be able to load our assault rifles with armor-piercing ammo (outlawed, by the way, in popular and cheap 7.62/39mm steel-core "armor-piercing" form by a Clinton edict last year) to make it a fairer fight against the Kevlar-clad feds? Should we not be allowed to have assault rifles with full-auto capability to give us at least a chance against the BATF's new ground-attack aircraft with infrared night-fighting equipment? What about Stinger missiles, which taxpayers paid for and our government gave to Afghans for use against Soviet helicopters? Without heavy antitank weaponry, how are we going to combat the Bradley fighting vehicles and M1A1 tanks that the FBI used to scorch the Branch Davidian compound at Waco? What about sophisticated chemical warfare gear to offset that dastardly CS gas (outlawed for use against foreign enemies) so prized by the FBI and BATF as an immobilizer of women, children, and old men? If the British had played this unfairly in the 1770's or our forebears had quietly knuckled under to arms restrictions . . . well, you know.

Before our Second Amendment rights are whittled away to the point where all we are allowed to own are single-shot .22 caliber rifles and 410-gauge shotguns, the law-abiding among us must steel ourselves and brook no interference with our right to keep and bear whatever arms we think necessary to preserve our liberties. We need more folks like Sheriff Arpaio and those in the three western-most counties of the Florida Panhandle, who are not fearful of taking collective self-defense as the very serious matter that it is. After all, why should a national government that purports to protect such liberties object if the people are equipped simply to help it do its job? But as the readers of this publication well understand, Leviathan wishes to disarm us because a well-armed and vigilant citizenry is all that blocks it from its ultimate goals: subverting the Constitution, imposing a police state, and merging the United States into the "New World Order."

Michael Hill is a historian and president of The Southern League. He writes from Tuscaloosa, Alabama.

ACADEMIA

The Creativity Profession

by Clay Reynolds

It has always been my impression that people who talk and write most about the creative process are not usually very creative. It's sort of like a corollary to that old maxim, "Those who can't do, teach"; those who can't create, analyze creativity. Conversely, I must confess that as a book critic who also publishes creative material, I find no apparent contradiction in attempting to write strictly from my imagination and then—often on the same day—grinding out a book review. Sometimes I criticize a work for being unimaginative, or, in the context of this essay, "uncreative."

When I conduct workshops for aspiring writers, I often tell them that the creative process is something that cannot be measured, developed, or enhanced. "You either got it, or you ain't," I say, which often gets wry smiles from my audience. "You can't coach speed." Most of them think I'm lying, of course. They have been taught somewhere that writing (or painting or composing) is all a matter of learning the closely guarded, secret tricks of the trade and then diligently applying them. A failure to succeed in a creative endeavor is merely a failure of effort, not a lack of talent, imagination, or originality. To admit that creativity was required would be to admit that they might not have it.

The ambition of many of my students is reflected in any hundred or so titles currently available to aspiring writers. *How to Successfully Publish for Money* could well be the title of all of them, replete with the split infinitive; but, as any book publisher will tell you, the only *sure* way to publish successfully for money is to write a book on how to publish successfully for money. P.T. Barnum was right about suckers, or at least about "wannabe" writers.

A recently published book on a related subject is *Creative Being: The Crafting of Person and World* by Eliot Deutsch, late of Columbia and Harvard, currently of Waikiki. Now, this book is hardly a "how to" treatise filled with helpful hints for a wannabe's inquiring mind. Rather, it is a scientific-philosophical analysis of personality and the relationship of experience to the expression of original (i.e., creative) thought, bringing together, as it were, Western and Eastern philosophy in an attempt to figure out why we are, as individuals, in possession of unique personalities that prompt us to "create," or perhaps "recreate," our own world. In short, it's philosophy. Even so, while I normally eschew such manuals and self-help guides, I was eager to read this new study when the editor of a literary journal asked me to review it.

With a Ph.D. from a fairly good school, and having long taught at the university level and published something in the neighborhood of 500 pieces, from one-paragraph reviews to full scholarly books, with a novel or two thrown in for good measure, I figured I could read, enjoy, and *learn from* a philosophical treatise dealing with the creative mind.

I was wrong. I was no more than ten pages into Professor Deutsch's book when I realized that I had *no* idea what he was talking about. I stopped, regretted the hour or so it had taken me to get that far, and started over, this time with a dictionary in hand. It didn't help. Only a few of the unfamiliar terms and expressions Professor Deutsch uses appear in *Webster's Ninth Collegiate Dictionary*, and none of them is defined in any way that aids the understanding of his thesis. He doesn't bother to define most of them either.

I'm speaking here of such words as "atemporal," "relatedness," "ontic," "physicalist," "mentalistic," and so forth, along with other expressions I have come to associate with current literary criticism, which I call "new-wave lit crit," or "punk philosophy," but which is more properly identified as "postmodernism."

I had to stop again and ask myself why any writer, particularly a distinguished scholar such as Dr. Deutsch, would choose to express himself this way. His prose is not "lucid," as the book's dust jacket claims; it's obtuse. It is truly a lesson in the use of jargon, something I should have suspected from the self-same dust jacket, which offered the term "contextualizes" as a bonus for any reader brave enough to essay forth into Professor Deutsch's treatise.

The book is, I suppose, creative, in the

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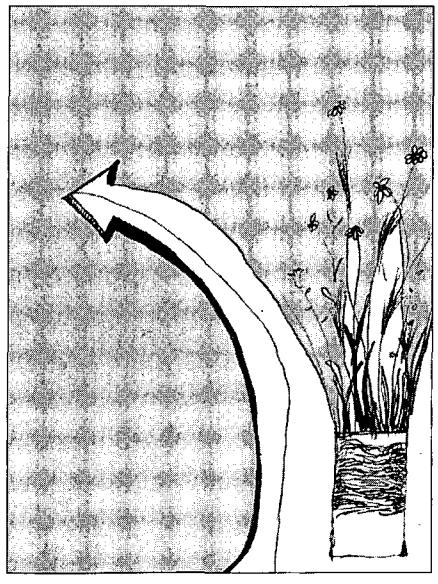
sense that it stems directly from Dr. Deutsch's imagination, or at least from what he imagines to be scholarly language. However, it has no apparent direction, no discernible purpose other than to celebrate itself. I've always felt that such displays of creative writing, especially in scholarship, were sort of like art without purpose, linguistic equivalents of graffiti or, perhaps, statues of pink flamingos on front lawns: interesting to look at for about a minute, but of no particular consequence except to distract from what might otherwise be seen clearly.

Nevertheless, I plowed on through the book, making notes on senseless words and phrases that defied reference-book denotations, and I came to the following conclusions.

One, a physical description of a thing makes a thing what it is and separates it from all other things; it puts a thing into a class of things and distinguishes it from all other things in that class; it establishes a thing as unique. People are not things because they possess reason and, hence, defy essential definition based completely on physical accidents and properties.

Two, Professor Deutsch believes that each person is a unique individual because each person is aware that he or she is unique.

Three, individuality is a product of personality, which is, in turn, a product of recalled experience, both imagined and real, both vicarious and actual; no two individuals perceive even an identical experience the same way; rather, they modify it according to previous or anticipated experience, environment, education; it is further modified by heredity.



Four, creativity is the product of applied personality, modified by experience, which also is modified (see number three); it is, therefore, unique to each individual, as each individual is unique to himself.

Such conclusions, of course, reveal no new ideas; none of them has sufficient impact to rock even a junior high class to its foundations or to get a clock-watcher's mind off lunch and sex. Most of this was discovered by Locke, Hume, Descartes, Spinoza, and, of course, the great-granddaddy of all philosophy, Aristotle. To a certain extent, one can reach the same conclusions by reading the Old Testament—or Dr. Seuss.

Could it be that this is *all* Professor Deutsch is saying? I think so. And that decision led me to two more conclusions: One, Professor Deutsch has a pretty good little sinecure; I mean, if he can get his own university press to publish not one but two volumes of this stuff and *still pay him to teach*, then he's a much smarter man than I am or ever will be. On top of everything else, he gets to go surfing anytime he feels like it. Two, more than likely, anyone who has read this book and understands it—including the editors at the University of Hawaii Press—is either lying or is so far removed from the average educated individual's level of intelligence that the CIA will probably want him as a cryptographer. (I might add that when a scholar has trouble with spatial perception and can't tell an adverb from an adjective, I have trouble trusting his ability to probe the depths of human philosophical development.)

None of this should imply that Dr. Deutsch is a confidence artist. Actually, he falls well into the mainstream of absolutely legitimate, completely acceptable, highly motivated, and much celebrated contemporary scholarly pursuits as they are being practiced by the "best minds" in America's universities today. Those professors on the "cutting edge" of intellectual inquiry spend a lot of their time doing a lot of talking—mostly to each other—about a lot of really important stuff. It's so important, indeed, that only a few of them have any notion of what it is, and even fewer of them have any understanding of what's being said about it. But that's how merit pay and release time come about.

Aristotle observes in *The Poetics* that the first consideration of rhetoric is audience; whom one is writing for (or, in the old Greek's case, speaking to), then, is the first and most important decision a writer must make when generating ideas through an expressive medium. My question is, "Who is Professor Deutsch writing this book for?" The answer must be "great thinkers," fellow philosophers, and profound intellectuals, most of whom are probably so far removed from the creative process that, without a full morning's contemplation of the problem, they have difficulty matching a pair of black socks.

I suspect I've inadvertently revealed my own personal prejudice. The sort of scholarship represented by *Creative Being* is self-serving to the point of egomania. It is indicative of the worst of contemporary intellectual fads in the academy: if it can be understood, it must not be important; if it fails to confuse, it fails to elevate.

The function of scholarly inquiry has always been and should remain the clarification of the obscure, the explanation of the difficult, the opening of that which is closed. In the past two decades or so, that has changed. Part of the reason, I think, is the tremendous pressure on young and not-so-young scholars to find something new to say and to publish it in order to advance in the profession; rather than thinking creatively, however, they are busily pouring old wine into new bottles and labeling them in a language no one can read. Indeed, the present function of scholarship seems to be to conceal the obvious, to make hard the easy, and to close the accessible—in other words, to achieve tenure, no matter what the cost to the greater body of knowledge in the world.

Thus, I refused the offer to review this book. The editor also refused to accept this essay in lieu of a review. (I suspect she may know Professor Deutsch.) I explained that had I not agreed to review it before I saw it, I would probably have perused the first five or ten pages and placed it on a special bookshelf I keep for books fitting the category "Life's Too Short." There it would join a dozen or so other much celebrated and discussed but seldom truly read volumes, which I firmly believe would never have been published if the editors were willing to confess that they couldn't understand whatever it was their authors thought they were trying to say.

Clay Reynolds writes from Denton, Texas.

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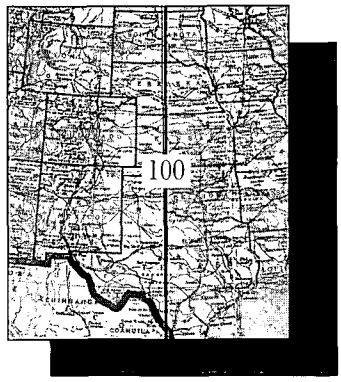
The Hundredth Meridian

by Chilton Williamson, Jr.

Fallen Walls



I studied the weather for four days before making a break for the south, slipping between the winter storms along ice-packed roads wreathed with snowsnakes across sun-glazed plains in the direction of the Salt Lake Valley, where much of the snow had evaporated under a stiff northwesterly wind and horses and cattle at American Fork grazed the still-green grass. In the Wasatch Mountains Soldier Summit lay under several feet of wind-swept snow, but soft sunshine pervaded the town of Price, Utah. Frosted angles in the Book Cliffs tilted in lavender and rose hued shadow against the orange and red walls; south of Moab the pinyon and cedar forests of the upland desert, the sandstone domes, and the slickrock buttes sheltered patches of snow. At Monticello where the turned pinto bean fields lay brown and undulant in the blue shadow of the Abajo Mountains the suffering December sun fell abruptly, and I was accompanied on to Cortez, Colorado, by darkness and the smell of cedar smoke issuing from the semi-darkened houses beside the road.

In pickup trucks coming north from Shiprock, New Mexico, the next morning only the foreheads and eyes of the drivers, surmounted by wide black hats, showed above the steering wheels. At Shiprock I turned away from the blocky silhouette of the Chuska Mountains in Arizona toward Farmington on the four-lane road across which Indians stagger from the bars to the footbridges over the San Juan River and where fatalities are nearly a nightly occurrence. Named for the homesteader who discovered the archeological site in the 1870's and protected it against looters before the federal government relieved him of the responsibility, the Salmon Ruins are situated at the city's eastern edge. They are the remains of an Anasazi village, whose three foot-thick walls faced inside and out with brick and filled with stone rubble were built 22 years after William the Conqueror invaded England: a warren of kivas, store rooms, and sleeping quarters abandoned a couple of centuries later in the mysterious general catastrophe that overtook all the Anasazi communities of the American Southwest. "The Southwest," Harvey Fergusson, the late New Mexican author, wrote in his book *Rio Grande*, "is a land of fallen walls, littered with ruins of all ages and in all stages of decay. Tribes, cultures, classes have lived and died here, leaving their shells to crumble slowly in the dry preservative air."

Dustdevils levitating paper bags and tumbleweed raced and spun in the streets of Bloomfield, and the wind blew hard over fields watered by the Navajo Irrigation Project on the mesa south of the San Juan. Past the dirt turnoff to Chaco Canyon the sagebrush plain gave way to the rougher canyon country of the Jicarillo Apache Reservation, and the long bulk of the Nacimiento Mountains rose slowly to form a barrier in the east behind the dusty Indian town of Cuba. More striking as you progress south than the darkening skins, the adobe houses, the soft bright vowels of the Spanish tongue, the greasy-green creosote bush, and the crooked cholla is the ubiquitous trash. Brown paper bags and plastic ones, paper cups with the straws poking through the plastic tops, fertilizer sacks, cardboard boxes, and torn burlap blowing over fields and across highways, hanging up on the derelict auto bodies and rusting farm equipment, the evicted wringer washing machines and coil refrigerators: these constitute the dying wavelets of a flood originating in the Mexican interior which, smashing across the international boundary, submerges the border towns and cities and rolls northward as far as southern Utah and Colorado. Between Cuba and the hamlet of San Ysidro volcanic necks supported by triangular pedestals appeared in hazy profile distantly out of the pale refracted light through drifting clouds of dust. Brown leaves clung in bunches to the great riverine cottonwoods and thin yellow ones jittered in the aspen trees beside the highway; across the tremendous landscape bursts and sprays of light came and went in a confused and windswept sky. East of Bernalillo beyond the Rio Grande the Sandia Mountains caught the golden sun of late afternoon and folded it away in shadow as if to preserve it through the winter, but the river itself remained concealed by the desert bluffs for many miles after the glittering lines of traffic on the interstate running parallel to it were visible.

While the Rio Grande is the great pump rising near Pole Creek Mountain (elevation 13,716) immediately east of the Continental Divide and the town of Silverton, Colorado, to drain the watershed of the San Juan Mountains and irrigate the southern floodplain farmed by agriculturalists for almost a thousand years, the valley in which it flows has functioned since the 16th century as the trunk of a great proliferating tree drawing the Spanish and Mexican influences upward from a root system embedded deeply in Mexico. With its large and territorially extensive Indian population, New Mexico would be the least "American" of the Southwestern states even without the Spanish presence, which—more than that of the ghostly Anasazi—is responsible for a sense of mystery that deepens as you approach Mexico. The secret of the Southwest is, to paraphrase Edward Abbey, that it belongs to everyone, and to no one; a region that so often appears to be disintegrating, culturally and politically, has in fact never been integrated. As the Navajos arriving from Alaska displaced the Anasazi, the Spanish expropriated the Navajo and the Pueblo, and the Americans superseded the Spanish, the Mexicans may well overrun the Americans in the next century—or sooner. Unlike the historically naive and complacent "Anglos," the proud descendants of the *conquistadores* in the valley of the Rio scorn and despise the Mexican wetbacks and migrants

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whose arrival in New Mexico disturbs them, perhaps because their Catholic faith has sensitized them to the ironies of history. For the time being, however, the People's Republic of New Mexico remains much more Spanish and Indian than Mexican, in spite of having become a completely developed welfare state where the great majority of shoppers pay for their groceries with Food Stamps, a tax is levied on every imaginable transaction, and residents with a convenient landfill available to them prefer to haul their garbage out of town and dump it anywhere in the desert.

At Albuquerque thick clouds of dust blew out of the valley from the dry cuts made by earthmovers preparing for the advance of a modern city of half a million people, its towers glinting dully in a haze of topsoil and smoke. South of the metropolis, Interstate 25 crosses the river slipping between banks of rustling cane and the cottonwood bosques burred with their dead, light, resistant leaves where some years ago, riding horseback, I started thousands of wintering geese and cranes that rose in a single broad sheet like the surface of the water lifting away. Mountains—the Mazanos, San Matteos, San Andreas—rose starkly from the gravel plains stretching west and east: the dry brown sterile-looking mountains of the Southwest, their sharp peaks darkened by pine forests resembling at a distance cloud-shadow cast against the brilliant sky. Beyond the Jornada del Muerto, the desert corridor where Spanish travelers died of thirst or were murdered by Apache raiders, uncertain vistas opened away through rugged mountain passes. Texture, form, color; blue, tan, beige, gray, and gold. . . . Los Lunas, Tomé, Belen, Jarales, Bernardo, Lajoya, Socorro: Spanish towns still inhabited by many of the families who settled them though their wealth is nowadays invested in car dealerships and real estate instead of in peons, cattle, and sheep. Socorro, whose low roofs are punctuated by the spires and belfries of many churches, was invaded after the Mexican-American War by the victorious Texans who stole land from the Spanish settlers, drove their sheep from the range to make room for their own cattle, and forced many of them to flee into Mexico. Already the snowbirds were arriving for the winter, elderly couples with blue hair and no hair in Southwinds and Winnebagos from Illinois, Ohio, and Indiana driving slowly and craning their necks as if worried for their next meal. South of Truth or Consequences a road sign indicated the turnoff to Silver City across the Black Range where Billy the Kid was raised and served his first brief jail term (made shorter still by an escape up the chimney after two days) for hiding a bag of laundry "stolen" by an older man for a joke. At Hatch, "Chili Capital of the World," the river rode silver between constraining banks across green fields past houses from which the blue smoke rose in soft perpendicular columns toward the hazy silhouette of the Organ Pipe Mountains many miles distant, and fins of rock like gigantic gnomons pointed south toward enigmatic Mexico. Darkness fell as I skirted the Franklin Mountains but El Christo Rey, seeming to gather light to its alabaster form out of a dying sky, was visible on its barren peak awaiting night and the passage of drug smugglers with their guns and pack animals across the desert plain. On Good Friday the people of Ciudad Juárez climb to the foot of the statue on their knees, in penance for their sins.

The following day, December the 12th, the Feast of Our Lady of Guadalupe, Patron Saint of the Americas, I crossed the footbridge from El Paso and followed the Avenida Juárez to the cathedral plaza where Indians stripped to the waist in the 40-degree cold, with bells and rattles tied to their ankles, danced barefoot on the stone flagging beneath headdresses of red and yellow feathers. A single dancer wore on his shoulders a cape embroidered with the image of Our Lady, commemorating her appearance to Juan Diego in 1531. (Historians and cultural anthropologists have speculated that it is the Aztec goddess Tonantzin, also called Coatlicue—"Lady of the Serpent Skirt"—who is actually being worshiped in the guise of the Blessed Virgin.) The big cathedral organ throbbed behind the beat of drums and the rattle of tom-toms, while the bell-ringers high above the plaza seized hold of the clappers and swung them back and forth inside the bells, which pealed loudly above the crowed. A fat old woman under five feet tall wearing a shabby pink sweater and bedroom slippers hovered at the edge of the dance, and now and again imitated its steps. Beyond the dancers a man sold candied cactus and people sat eating under a canvas tent, while another man bearing with outstretched arms an enormous festive cake on a board hurried across the street toward the mission. A crowd stood gathered beneath palm trees studying a mime as he powdered his face and adjusted his bulbous nose, another around a clown and his straight man in the roles of an outraged father and disobedient son. The great bells clanged for Mass as the procession made its way across the plaza, led by ecclesiastical dignitaries under banners. These were followed by a lengthy train through the wide doors standing open upon the packed church: the halt, the blind, and the lame; the disfigured, the sick, the simple poor of Mexico. Above the roll of the organ the drums and tom-toms were audible, still beating their savage tattoo, while in the belltowers the ringers leaned outward above the low railing, leering like gargoyles among the agitated pigeons.

Annunciation House was a wedge of grimy red brick pinched between converging streets in downtown El Paso; the December twilight was well advanced when I arrived there at five o'clock. Lounging men made way for me to enter through the door standing open on the *sala*, its walls covered with maps and flags of various Central American countries and drawings of the Virgin. Of the 10 or 15 people in the room only two small boys pushing toy cars over the rug seemed engaged, everyone else maintaining an attitude of patient obligation like reluctantly gathered relatives waiting for Christmas dinner to be served. The proprietress wore no makeup and had her brown hair cut short and plain. She seemed pleasant but a little narrow, in the way of people who believe that reality is hard and that whoever disagrees with this proposition is a sentimentalist. In one of the small plainly furnished rooms upstairs a party of refugees seated on improvised benches at wooden tables ate a supper of rice and beans, while a volunteer prepared an improvised chapel for the arrival of the priest from Juárez, where Annunciation maintains a sister house. "I'll probably end up going down there," Helen said. "You should hear an 11-year-old boy describe what it's like to live in a war zone. Our relations with the police are pretty good, considering what it is we're doing. But my view of those Immigration people is unspeakable. What does the earth look like in pictures taken from space? The divisions are between land and water, not one country and another. I suppose that's hopelessly idealistic, but anyway. Good night."

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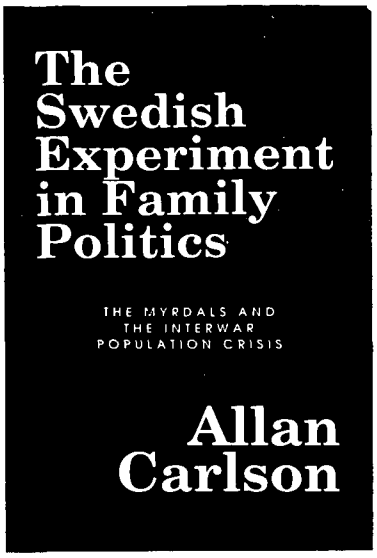

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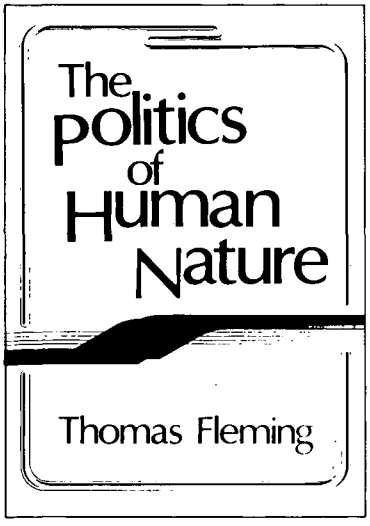

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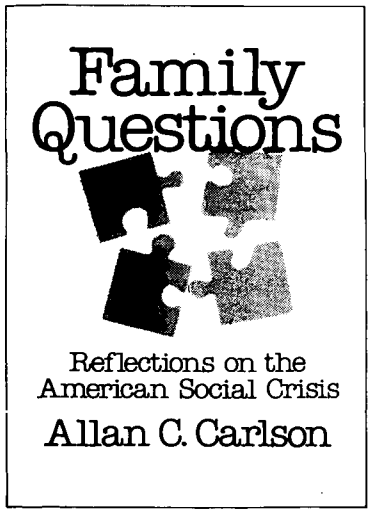

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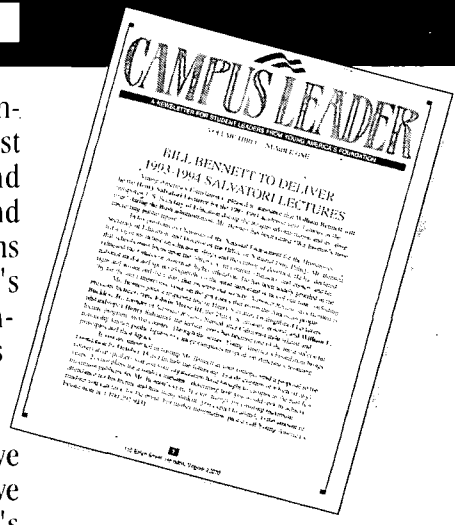

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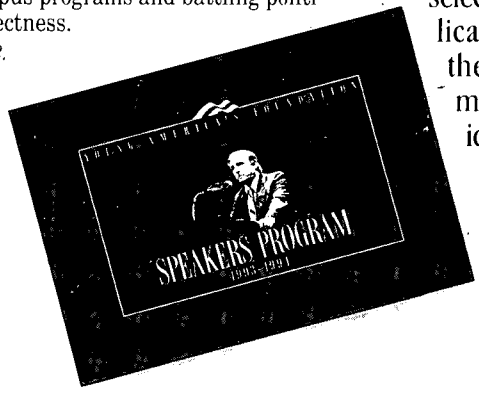

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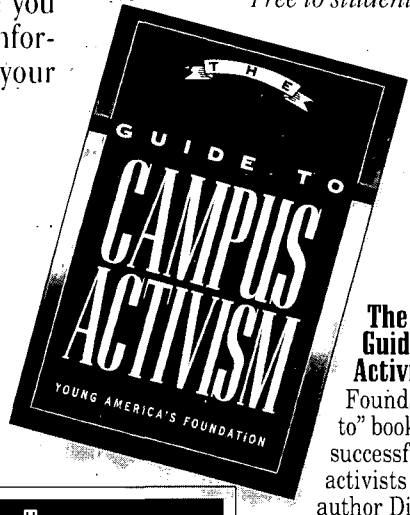

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